

Combating the illegal employment of foreigners in the enlargement EU: the case of Poland

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***COMBATING THE ILLEGAL EMPLOYMENT
OF FOREIGNERS IN THE ENLARGED EU:
THE CASE OF POLAND***

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Central European Forum for Migration and Population Research (CEFMR) is a research partnership of the Foundation for Population, Migration and Environment, Institute of Geography and Spatial Organization of the Polish Academy of Sciences and IOM - International Organization for Migration



International Organization
For Migration



Foundation for Population,
Migration and Environment



Institute of Geography and Spatial Organisation,
Polish Academy of Sciences

COMBATING THE ILLEGAL EMPLOYMENT OF FOREIGNERS IN THE ENLARGED EU: THE CASE OF POLAND

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Abstract: "The specific objective of this project is to provide policy-makers and practitioners with a good understanding of the impact of irregular employment of foreigners on the labour markets of the selected EU countries as well its potential for infringement on migrants' rights and for their exploitation; the identification of best measures taken to combat this phenomenon both by sending and receiving countries; and to contribute to administrative cooperation and information exchange among the participating countries on preventing irregular and promoting legal channels for employment. [...]" (after: www.iom.hu). The current paper focuses on the case of Poland.

Keywords: Population forecast, labour market forecast, Europe

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1 Introduction

The illegal employment of foreigners in Poland is not an important social issue in terms of the coverage it receives in the media and political debate. Few scientific studies have been devoted to the phenomenon and the research published to date has been rather narrow in scope. Even less attention has been devoted to state policy regarding the illegal employment of foreigners; so far, this has only been treated superficially in studies on Polish migration policy. Thus, this may be considered to be a pioneering report, focusing exclusively on Poland and examining in detail the issues of state policy towards the illegal employment of foreigners.

In Poland, which has traditionally been, and still is, a net emigration country, the inflow of labour migrants is a relatively new phenomenon, which arose after the collapse of the communist system. Even though the illegal employment of foreigners does not draw the attention of either the policy makers or the media, according to expert estimates, its scale is significant, being many times higher than the legal employment of foreigners in Poland. Therefore, it is not a marginal issue without economic or social impact. Foreigners undertaking work illegally are most frequently citizens of Ukraine, or, less often, of Belarus or the Russian Federation, who arrive in Poland with valid tourist visas. In terms of the law, these are people who arrive in Poland legally and reside legally, up to the moment when they undertake work.

It follows that public opinion does not hold the phenomenon itself to be a criminal offence, an attitude often found in those countries where illegal employment is linked to illegal residence or even illegal border crossing, but tends towards a perception of this as a way of ‘making a living’ under harsh economic conditions. A similar strategy has been employed by Poles in the past, especially during periods of high unemployment, when they have agreed to work illegally, while employers have turned to illegal hiring in order to reduce costs and maintain their hold on the market. Given this experience within the country, coupled with the experience, especially frequent in some regions, of illegal labour migration to Western European countries, Poles display an understanding attitude towards Ukrainians and other foreigners undertaking illegal work in Poland.

These factors explain why, in spite of its scale, the illegal employment of foreigners in Poland does not stir significant social reactions and, at the same time, it accounts for why state policy in this field is of low priority in comparison to other social issues. Although state regulation of the employment of foreigners does exist, (see Section 3), nevertheless, as this study demonstrates, effective implementation of the law aimed at combating the irregular employment of foreigners poses certain problems, and as a result, illegal employment is tolerated in practice.

In the introduction we would also like to clarify the definitions used in this study. We have consistently used the term ‘illegal employment of foreigners’ when referring to work or to any other economic activity carried out by foreigners in violation of the Polish law on the employment of foreigners or on their economic activity. The adjective ‘illegal’ is used here by the authors solely with the intention of giving a precise name to the phenomenon being studied, that is, to work or economic activity which is undertaken illegally and is thus in violation of the law; its use in this report carries no pejorative connotations whatsoever.

Along with the policy on illegal employment, we present the efforts made by the state to combat human trafficking in Poland, considering human trafficking as the most drastic form of exploitation, forming the end of a continuum that ranges from decent work, through various forms of exploitation, often related to the illegality of the employment, to human trafficking.

2 Illegal employment of foreigners in Poland: the scale, nature and reasons behind the phenomenon

This section presents the phenomenon of the illegal employment of foreigners in Poland in the wider context of unregistered employment within the Polish economy. It attempts to evaluate the scale of illegal work being done by foreigners in Poland, analyse its nature and forms and draw attention to the most important factors contributing to the proliferation of the phenomenon in certain sectors of the economy.

2.1 Illegal employment in Poland – the characteristics and scale of the phenomenon

The role played by the grey economy within Poland’s economy as a whole may definitely be said to be considerable, although it is difficult to estimate with exactitude. Depending on the year and the methodology employed, its share of the GDP (gross domestic product) has been reported as being between 14% in 2003, according to an estimate produced by the Central Statistical Office (CSO: *Główny Urząd Statystyczny*) and 27.4% in 2000, as estimated by the Institute for the Study of Labour IZA (both figures quoted in Biletta and Meixner, 2005: 7).

Turning more specifically to the factor of illegal work, according to Polish CSO estimates, the number of unregistered workers increased from 885 thousand in 2000 to 924 thousand in 2003 (Flaszyńska and Zaráński 2005: 68), while the registered working population in 2003 reached 12.6 million (CSO 2007: 19). The most detailed and recent study of the phenomenon conducted by the CSO was the special module on unregistered work conducted within the Labour Force Survey in the third quarter of 2004. In this survey (CSO 2005), drawn from an address sample, over 21 thousand people over the age of 15 answered questions concerning their experience as unregistered workers and their opinions on employment as unregistered

workers. According to the survey, in the period between January-September 2004, 1.317 million Poles worked illegally, which was over 9% of the total working population (CSO 2005: 11). For 829 thousand of them, unregistered work was their main or only job. However, the unregistered work was often episodic, with 50% of those involved having worked illegally for no more than 20 days a year (CSO 2005: 15). On the other hand, for 43.5% of illegal workers, their undeclared pay accounted for between 76–100% of their total income. Mean monthly earnings from illegal work were very low, amounting to 392 PLN, or 448 PLN in the event of its being the person's only job (CSO 2005: 20–21).

In contrast, on the basis of the “Social Diagnosis 2005” survey (Czapiński and Panek 2006), Czapiński identified a significant group of registered unemployed people who achieved a monthly income above 850 PLN from undeclared work (Czapiński 2006: 256). It may therefore be proposed that there are, in fact, two groups of Poles involved in undeclared work. One group works occasionally, gaining only small income, as ‘pocket money’ in the case of students, or as a supplement to old age pensions, social benefits or regular pay from registered work. The other group regularly works illegally and relies on this source of income. Foreigners working illegally in Poland probably belong, in the majority, to the latter group.

The reasons put forward by Poles for undertaking illegal work were the lack of opportunities for finding registered employment, insufficient earnings from other sources, over-high, gross labour costs and, in turn, the higher salaries offered for unregistered work (CSO 2005). Significantly, the general population gave the same reasons, ranked in a similar order, as the illegal workers themselves. Similar results were obtained for Poland in the 2007 Eurobarometer survey, where 30% of the Poles surveyed were of the opinion that overly low salaries in regular businesses are the primary reason for undertaking undeclared work, combined with the 19% who declared the primary reason as being over-high taxes and/or social security contributions (Eurobarometer 2007: 41). The lack of regular jobs being offered on the labour market was only the third reason given (11%); the decline of its importance in comparison to the 2004 survey was most probably caused by the rapidly growing domestic demand for labour due to faster economic growth and the massive outflow of workers which occurred after accession to the EU.

Various sectors are affected by illegal work to different extents. Among those which are usually named as the most popular among unregistered workers are construction, agriculture, commerce and the care services and domestic services (CSO 2005: 14, Czapiński 2006: 256); unregistered employment can be also found in hotels and restaurants (Biletta and Meixner 2005: 5). Which sectors are generally acknowledged as being predominant in the area of undeclared work also constitutes a kind of common knowledge among officials of the administrative authorities (I1PL). One trait which these sectors have in common is that they offer a large number of low qualified jobs that would not be created legally, as it would no longer be profitable for employers if they had to bear the gross costs of legal employment. In urban areas, there is also a sector of unregistered highly skilled services, such as translation,

private language tuition, legal and financial advice and IT services, which can be offered by well-educated workers and students in order to gain extra income (CSO 2005: 19, Golinowska 2005: 98).

Illegal work has a variety of forms. It can easily be hidden as services performed by one private person for another, as in the case of care work, mutual assistance between neighbours, or private lessons. It sometimes involves a greater number of workers, but over a short period of time, as in the case of intensive work in agriculture during harvest. Illegal work is also performed for the large construction companies, but concealed in a chain of subcontractors. In this sector, the system of subcontracting tasks to smaller companies facilitates the reporting of only a small fraction of the labour and the paying of the majority of workers under the table. In addition, the regulations on public tenders and orders mean that contracts will be awarded to tenderers offering prices achievable only by the utilization of illegal work (TU1PL). Thus, according to estimates made by the construction workers' trade union, 30–35% of the work within the sector is carried out illegally, which causes a problem for those companies who make the effort to conform to the law and pay taxes (TU1PL).

An interesting phenomenon within the field of illegal work in Poland is the undeclared work carried out by people registered as unemployed. This has been the subject of several studies since 1989. A 1998 survey showed that 67% of Poles believed that half or more of the unemployed were, in fact, employed illegally (CBOS 1998). The “Social Diagnosis 2005” survey showed that some people who were registered as unemployed worked and earned a net monthly income above the level of the official minimum wage. 22.4% of these unregistered workers continued to receive unemployment benefit to which they were not entitled (Czapiński, 2006: 256). In the EU27 survey of 2007, 71% of Poles, constituting the highest share among all the countries studied, declared that in all likelihood, the unemployed would carry out undeclared work (Eurobarometer 2007: 39).

The information provided by social surveys is supported by the results of labour legality inspections (Ministry of Labour and Social Policy 2007). In 2006, labour inspectors identified 5793 cases of registered unemployed people in illegal employment, including 375 who were also receiving unemployment benefits. The majority of these people worked in retail, in other service industries, or in construction. As a result, the state also received more than PLN 218 thousand in returned social benefits which had been paid unduly (Ministry of Labour and Social Policy 2007: 33–34).

Various social studies conducted during the 1990s and 2000s show a high level of social acceptance for the undertaking of illegal employment both in Poland and abroad. In 1998, 58% of the interviewees found the notion of working illegally and receiving unemployment benefit at the same time to be acceptable, while only 36% held such behaviour in contempt (CBOS 1998: 2). Until 2004, for overwhelming majority of Poles the legal channels for labour migration to EU countries or the US were very limited, with the only large-scale

exemption being seasonal work in Germany. Therefore, in the past, many Poles have engaged in illegal employment in the EU or North America. In a survey conducted in 2006, 12% of the relatives of Polish respondents employed abroad were involved in illegal work in the EU (CBOS 2006: 5). Among those respondents who declared an interest in labour migration, a strikingly high proportion, 41% in all, accepted the possibility of working illegally, despite the existing possibilities of being employed legally in at least eight of the 'old' EU countries (CBOS 2006: 12).

The general distrust felt by Poles towards the authorities and the regulations they impose, a social attitude shaped in reaction to the communist regime, should also be mentioned among the factors contributing to the popularity and acceptability of unregistered work. The surveys show high tolerance for illegal labour as an opportunity for the resourceful and a necessity for the poor. Given the high additional costs imposed on registered employment, Poles are ready to outwit this unfriendly system by working in the shadow economy. The idea that illegal workers fail to contribute to the national budget and thus increase the burden born by the rest of society does not seem to have gained common currency.

2.2 Illegal employment of foreigners in Poland

The only unquestioned fact regarding the illegal employment of foreigners in Poland is that its scale is much higher than that of the legal employment of foreigners. Therefore, it is worth introducing the topic by presenting some basic information on the limited possibilities of legal work in Poland for non-nationals.

The scale of legal employment of foreigners on the Polish labour market is very low. There are several categories of foreign labour, yet statistics are only available for some of them. The legal forms of employment of foreigners detailed below comprise only about 0.1% of the working population of Poland. The proportion of foreign workers is thus too low to be represented in the Labour Force Survey.

The basic instrument for the legalisation of the employment of non-nationals in Poland is the work permit (Table 1). Over 10 thousand work permits have been issued annually in recent years, most of them in the manufacturing and mining industries and in trade. The number of permits in trade, education and construction has decreased most rapidly. The general number of permits also decreased over the period 2002–2005, mostly due to the fact that many categories of foreigners were granted the right to work legally without obtaining a permit. The major group exercising freedom of employment consists of EU citizens; however, numerous other groups such as academics, students on internships at Polish medical schools etc. may also undertake work without a permit.

Table 1: Work permits granted to individuals by sector, 2001–2007

Year	Total number of permits	Manufacturing and mining	Construction	Trade	Hotels and restaurants	Financial intermediation and real-estate activities	Education	Health and social work	Other
2001	17038	2643	851	4777	966	1865	2646	420	2439
2002	22776	4117	1102	5332	1137	843	3238	468	6539
2003	18841	3785	763	4660	1045	2945	2665	408	2570
2004	12381	3455	416	3798	920	1080	1515	343	854
2005	10304	3145	303	2830	809	1000	1031	305	881
2006	10754	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
2007 1 st half	5750	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

Sources: 2001–2005: *Kepińska* (2006: 75–78); 2006–2007: *Ministry of Labour and Social Policy (MLSP)*¹

A new form of legal work for the citizens of countries neighbouring Poland is that of a six-month period of employment requiring no work permit and based simply on the employer's registered declaration. In September 2006, this form² was introduced in the agricultural sector and was used by 1500 migrant workers over a period of nine months. In July 2007, it was replaced by a new regulation, which widened its application to all sectors of economy. The initial data show 9198 cases of declarations registered between July 20th and September 31st 2007 by employers willing to take on such a foreigner; of the 9198, by nationality, the majority (8551) is represented by citizens of Ukraine and, by sector, by farming and construction (5480)³.

In contrast to the limited numbers of legally employed foreigners in Poland, illegal employment is estimated to be much higher. Illegal work carried out by foreigners in Poland has its origins in the petty trade of the citizens of the former Soviet republics, which was very popular in the early 1990s. By the end of that decade, as retail became more difficult, many of the petty traders turned to illegal work (Okólski 1997: 42, Stola 1997: 14). The massive circulation between Poland and the neighbouring countries and the illegal employment of migrants was possible thanks to the almost unrestricted possibility of staying in Poland for a

¹ Data published on the MLSP website: for 2006 <http://www.migracje.gov.pl/?1,9,46,200710>, and for 2007: <http://www.mpips.gov.pl/userfiles/File/Migracje/CUDZOZIEMY%20W%20POLSCE%20I%20polrocze%202006%20i%202007.pdf> (accessed on 2nd April 2008).

² Initially, the permitted period of employment was three months; this was increased to six months with effect from 1st February 2008.

³ Data published by the Ministry of Labour and Social Policy on November 19th 2007, in explanation of the drafting of a proposal for a new regulation in the field: <http://www.psz.praca.gov.pl/main.php?do=ShowPage&nPID=867686&pT=details&sP=CONTENT,objectID,873627> (accessed on 2nd April 2008). According to the *Rzeczpospolita* daily (14.04.2008), 23 thousand declarations were registered in the first half of 2008.

period of three months as an officially declared tourist. Until October 1st 2003, no visas were required for Ukrainians, Belarusians and Russians. After that date, Poland introduced visas; however, tourist visas were free of charge for Ukrainians and, at a cost of 10 Euros, were relatively cheap for Belarusians and Russians.

On the basis of a border survey carried out in 1995, researchers suggested that the number of Ukrainians working in Poland could amount to more than 500 thousand (Iglicka 2000: 1240). According to other, more recent estimates collected by Frelak (2005: 6), the number of foreigners working in Poland, illegally for the main part, was between 50 and 300 thousand, most of whom were Ukrainians. The basic assumption behind these estimates was that access to the Polish territory was cheap and easy and that the majority of tourist visa holders from Ukraine in fact undertook illegal work during their stay in Poland, thus violating their visa conditions. According to one survey, 10.5 million tourists⁴ from Ukraine, Belarus and Russia travelled to Poland in 2005 and almost 45% of them declared their journey to have an economic aim; this included work, business and shopping (Bartoszewicz 2006: 2–3). These conditions of free access to Poland under the heading of tourism changed dramatically in December 2007 and their impact on the scale of the illegal employment of foreigners will be observed in the months to come.

Apart from these estimates, the only data on illegal work performed by foreigners in Poland concerns illegally employed foreign workers uncovered by the Polish authorities (Table 2).

Table 2: Number of cases of illegal employment of foreigners uncovered, 2002–2006

Year	2002	2003	2004	2005	2006
Number of cases	2080	2711	1795	1680	1718

Source: 2003–2006: Ministry of Labour and Social Policy (2007: 28), 2002: Zawadzka and Zdrański (2003: 208)

The data concerning the most recent periods were quoted by the interviewees. According to the Border Guards (BG: *Straż Graniczna*), between January and August 2007, 486 foreigners were held in custody by the BG after being subject to a decision, as provided for by the Act on Aliens, obligating them to leave the territory of Poland as a result of carrying out work illegally (I2PL). In the first half of 2007, the Customs Service (CS: *Śłużba Celna*), as one of the institutions with the powers to identify illegal labour of foreigners, uncovered 278 such cases (I3PL). Access to comprehensive recent data is complicated by the reorganization of the control authorities which took place in the course of 2007.

⁴ Tourists are defined by the authors of the said survey (the Institute of Tourism) as visitors who spend at least one night in a country and whose main aim is not economic activity. However, the survey records the visitors' declarations and, according to the author of the report, labour migrants from the East often use the 'business trip' category as a cover for the real aim of their stay in Poland.

Additional insight comes from the analysis of the number of foreigners who have been subject to expulsion or a decision obliging them to leave the Polish territory as a result of having been engaged in illegal work (Table 3).

Table 3: Foreigners subject to expulsion orders or a decision obliging them to leave the territory of Poland as a result of illegal work, 2005–2007

Year	2005	2006	2007*
expulsion order	99	685	334
decision obligating departure from the territory	200	1624	1040

* Data for the period 01.01.2007–05.10.2007.

Source: *Office for Aliens – data prepared on request*

Due to the scarcity of data and lack of detailed comparative studies, little can be said with regard to the similarities and differences between the illegal employment of nationals and that of foreigners. Foreigners who come to Poland as temporary economic migrants and with the goal of maximising their income most probably work much more intensively than most of the undeclared Polish workers, who often have other sources of income and undertake illegal work only occasionally (CSO 2005: 27–28). Since foreigners can be denounced and deported, they are much more vulnerable to the abuse of their rights by employers, while, in case of Polish nationals, it is they who can denounce the employer. There is also a separate labour market consisting of foreigners employing other foreigners, especially their compatriots, for example, women from the former USSR who are employed as waitresses and kitchen maids in ethnic takeaways; this is particularly common among the Vietnamese (Koryś and Kloc-Nowak 2006: 34–36, 97, 103).

There are no widespread signs of social protest against the employment of foreign workers, as they are usually perceived to be filling the gaps on the labour market, for example, by gathering the fruit that would otherwise be wasted. In addition, it seems that many Poles sympathise with them, as they either work illegally themselves in Poland or abroad, or have had experience of this in the past (see Section 2.1. above).

The information provided by inspections conducted by the ‘labour police’ units of the voivodship offices⁵ shows that the largest number of cases of illegal employment of foreigners occurs in retail and trade, other services and construction (Table 4). In one sector, that of trade, the illegal work carried out by foreigners is more concentrated than that performed by Poles.

⁵ Voivodship is Poland’s first level of regional government. Other are: district (*powiat*) and commune (*gmina*).

Table 4: Available data on illegal employment in Poland, by sector of economic activity

Sector of economic activity	2004	2006		
	Cases of people illegally employed (both Poles and foreigners)	Number of employers recognized as employing illegally	Illegally employed Poles	Illegally employed foreigners
Construction	1214	610	1160	40
Retail& Trade	2451	2166	1570	1399
Other services	1727	1199	1691	151
Other	2049	1034	2918	128
Total	7441	5009	7339	1718

Source: Ministry of Economy and Labour (2005: 10), Ministry of Labour and Social Policy (2007: 33)

In the construction sector, Ukrainians make up the highest number of illegal workers, followed by Belarusians and other former Soviet Union nationalities (Bojar et al. 2005: 66, Kus 2004: 13). Representatives of trade unions, industrial chambers and employers' organizations estimated the scale of illegal work being carried out by foreigners in construction at 150 thousand in the high season (Kus 2004: 13) and as many as 180 thousand in 2007 (TU1PL). In order to comprehend the magnitude of the phenomenon within this sector, these estimates need to be set against the scale of legal employment of nationals at 346 thousand (Bojar et al. 2005: 66) and the 303 individual permits issued to foreigners in 2005 (Kępińska 2006: 78).

Subcontracting and shifts system constitute the primary means by which illegally employed foreign construction workers are concealed. Subcontracting means that illegal work is often done for a small company, or even for a self-employed person, situated at the end of a 'chain' of declared contracts which are subject to taxation. At the same time, according to the experts (TU1PL), while the first shift is mostly constituted of Polish and legal workers, the second, in part, and the third, night, shift are predominantly manned by illegally employed Ukrainians, even in the centre of Warsaw. According to Polish workers, the foreigners do not need to fear inspections and can move around freely in Polish towns. However, their number is said to be lower than in the late 1990s (Bojar et al. 2005: 72-75).

The construction workers from the former USSR interviewed by the Polish researchers had usually completed their secondary education; however, some of them were highly qualified, being, for example, engineers and university graduates, but had decided to accept work in Poland for which they were over-qualified, due to the very low salaries in Ukraine. They usually came for the summer season and lived on concealed premises organised by their employers (Bojar et al. 2005: 68). They were predominantly males; young women were only occasionally employed on finishing work in private houses (Koryś and Kloc-Nowak 2006: 29).

Agriculture is a sector providing employment for a large number of foreign seasonal workers all over Europe, and Poland is no exception. The bulk of Polish farms are small and run by family members, but need additional workers in the harvesting season (E2PL). Migrants are employed in harvesting the fruit and vegetables in the fields and orchards. They also sort them and pack and prepare them for transport. In addition, labour is constantly required by large agricultural enterprises using greenhouse cultivation methods and operating throughout the year, storing, or even processing, fruit and vegetables, (Antoniewski 2002: 42–43). In larger agricultural enterprises, migrants also work on fruit processing. Male migrants are sometimes involved in the repair of machinery and the construction of farm buildings. Participant observation conducted in the 1990s revealed that the farm workers from Ukraine were usually 30–55 years old and the sex structure was balanced (Antoniewski 2002: 41). The proportion of people less suited to hard physical work, for example, young women, has recently increased among migrant workers, and especially among newcomers (E2PL).

Until 2007, three-month tourist visas were usually used for legal entry onto Polish territory; the length of the legal stay was enough to permit the undertaking of seasonal work in farming. Both migrants and employers prefer the regular return of the same workers to a given farm (E2PL). Private bus operators often act as intermediaries in the employment process, bringing groups of foreigners to the countryside. The drivers are paid by the employers for finding workers and they also perform services for the immigrants, such as transferring cash or supplies between countries. As the number of immigrants keen to work in Poland diminishes, the fruit growers become even more dependent on the intermediation of the drivers. As a representative of the employers reported, a few years ago the drivers used to provide “full buses” of workers to a single village; now they sometimes arrive with no more than five (E2PL). As a last resort, farmers travel to particular places, where migrants wait in the mornings to be recruited for short-term jobs (Antoniewski 2002: 43). In the opinion of the representative of the fruit growers’ association being interviewed, it has become more difficult to secure the annual arrival of reliable Ukrainian workers, who are now less interested in low paid work in Poland as a result of the competition presented by other destinations, mainly in South-Western Europe (E2PL). The solution put forward by the Ministry of Labour and Social Policy was to bring in groups of migrants from Asia⁶; however, this was eventually blocked by the Ministry of the Interior and Administration due to security concerns. Meanwhile, the farmers, accustomed to workers from neighbouring countries, have indicated their preference for the workers from these countries, particularly Ukraine, on account of the linguistic and cultural proximity, both of which are said to enhance cooperation (E2PL).

While the construction sector is male dominated and the farming sector is balanced as regards the sex of the foreign workers, the domestic services are dominated by irregular female workers. According to the 2001 survey, about 925 thousand Polish households employed

⁶ Z. Lentowicz, „Chińczycy zbiorą nasze truskawki” [Chinese to harvest our strawberries], *Rzeczpospolita* 26.03.2007.

regular or intermittent domestic labour, 10% of whom are foreign workers, mostly women from Ukraine⁷. In the main, the services they provide included general housework (34%), caring for an elderly or disabled person (10%) or child care (6%) (Golinowska 2004: 189).

Qualitative research indicates that many of the foreign female workers have received a secondary or vocational education and then migrated due to unemployment or not receiving their salary from their employer in their country of origin. The two predominant types of domestic worker are cleaners and carers. The former usually live in rented apartments with other immigrants. They find employment through word of mouth recommendation among employers. If they are trusted, they are given the keys to their employers' homes and can thus organize their own working day, which allows them to minimize the time and cost of transport and maximize their working hours during their short stay in Poland. Until December 2007, the cleaners usually entered the country on three-month tourist visas and, in order not to abandon an employer in the periods between one stay and the next, recommended their relatives or friends as temporary replacements (Bojar et al. 2005: 36).

A specific group is formed by live-in domestic workers, who constitute about 15% of the foreigners employed by private households. They establish a closer link with one employer, usually as a result of their responsibility as carers. In October 2003, a change to the visa regulations was implemented, making a prolonged stay in Poland, which could be renewed by a visit to the border, impossible. This caused a problem for the Ukrainian carers. As it is difficult to use the rotation system described in the previous paragraph when a child or an elderly or handicapped person is involved, some carers found themselves under pressure to prolong their stay illegally or to bribe Polish officials in order to obtain a new visa without the required waiting period (Bojar et al. 2005: 31). It has been also observed that younger women were applying to study in Poland in order to qualify as students for a fixed-term residency permit of one year's duration. (Koryś and Kloc-Nowak 2006: 29).

Another sector employing a large number of foreigners illegally is retail. Petty trade was the first type of economic activity developed in Poland by migrants in the 1990s and it involved many nationalities belonging to the former USSR, such as Russians, Ukrainians or Armenians (Stola 1997: 5, 7–8). Gradually, with the decreasing demand for cheap and low quality imported products, such retail became less profitable and thus less popular as an activity for economic migrants. Since that time, some citizens of Ukraine or other former Soviet republics have either turned to illegal employment or left Poland. Nevertheless, many citizens of Belarus, Ukraine and Russian Kaliningrad continue to be involved in unregistered trade in Poland, especially near the eastern border. Some of them cross the border several times a day with the permitted, small quantities of products, which they sell in the destination country. According to estimates, of the 5.6 million Polish border crossings made by Ukrainians, only

⁷ It is necessary for estimates of the scale of the domestic services sector made on the basis of this survey to take into account the fact that 38% of the cases included represent the employment of workers by small, family-run farms, since a farm was understood as being a household.

2.5 million were tourist arrivals⁸, while the rest lasted for less than one day; it is probable that the majority of these involved shopping and small-scale trade. Often the products sold are also illegal, for example, untaxed cigarettes, alcohol or fuel. These activities come under the jurisdiction of the customs service; since 2003 this service has had the power to identify cases of unregistered work or economic activity and one area in which it is applied is that of traders.

The Vietnamese form a group that have specialized in the textile trade, both retail and wholesale, from the outset. Although estimates suggest that the community has decreased from 100 thousand to only ca. 30 thousand (Koryś 2004: 31), they maintain the most complex trade structure, involving both legal and illegal workers. This trade was launched by Vietnamese students and members of the diaspora who had moved to Poland under the communist regime (Koryś 2002: 26). The first traders noted the demand for cheap Asian textiles and started to import them from China. While the pioneers have since developed large legal trading companies, this is a labour-intensive business which has demanded a supply of manpower; relatives of earlier migrants began to meet this demand, as did other people, some of whom, facing difficulties with getting Polish visas, were smuggled from Vietnam via Russia and other neighbouring countries (Koryś and Kloc-Nowak 2006: 103). The people thus smuggled are often indebted to their relatives and/or their employers or to the smugglers themselves. They form the lowest strata of the Vietnamese community, working as porters and cleaners in the marketplaces and warehouses.

Many of the salespersons also work and reside in Poland illegally. In “Jarmark Europa”, the largest open-air marketplace in the country, located in the old stadium in Warsaw, renting a trading place requires the lessee to have legal residency status and a registered company. According to the research conducted by Aleksandra Grzymała-Kazłowska, there were ca. 1100–1200 Vietnamese stalls rented by only 300 persons, who then employ workers or sub-rent them to others without declaring this fact to the market’s authorities (Grzymała-Kazłowska 2004: 404). The poorest immigrants try to accumulate capital through selling merchandise taken on commission from the more wealthy businessmen (Koryś and Kloc-Nowak 2006: 86). Only a proportion of the Vietnamese can afford to legalise their activities by registering a company and securing a residence permit, especially as they rely on costly lawyers and intermediaries to assist them with the procedures (Koryś 2002: 10). From the qualitative interviews conducted with the Vietnamese, it may be extrapolated that the women put more effort and time into retail, guarding the stalls and selling the goods to Polish customers, often at night, while the men spend more time socialising with other male Vietnamese, although they might also be doing business during these meetings (Koryś and Kloc-Nowak 2006: 78–79).

To complete the picture of the illegal work carried out by foreigners in Poland, one must also include the activities of highly skilled immigrants which are performed without registration,

⁸ Institute of Tourism estimates: <http://www.intur.com.pl/itenglish/arrivals.htm>

or separately from their registered work. It is most probable that these illegally undertaken activities are similar to the case of undeclared work carried out by Polish highly skilled nationals; private lessons, legal and financial counselling and translation, for example (CSO 2005: 19).

In the late 1990s, inspections with regard to employment legality also identified cases of the illegal employment of citizens of Western countries, such as Germany, France and the Netherlands; these were usually cases of managers working on large investment projects or for supermarket chains (Okólski 2000: 21–22). The opening up of the Polish labour market after Poland's accession to the EU has reduced the scale of this problem. The best-described group of unregistered, highly skilled workers are language teachers. Native speakers from the USA, African English- or French-speaking states, sometimes work in private language schools with neither a contract nor a work permit. Since many foreigners are employed as language teachers in Polish state schools, it may be expected that a number of them also give private afternoon lessons, just as their Polish colleagues do (Bojar et al. 2005: 9–11).

It is worth pointing out that foreigners who arrived to Poland seeking humanitarian protection also undertake illegal work. First, they look for jobs during the procedure of application for refugee status, in order to have an additional income and be active during their period of stay in the refugee centre. Then, there are those who are granted refugee status, which entitles them to social assistance for one year, at times engage in illegal employment. In the opinion of social workers employed in regional social assistance centres, they prefer to work illegally in order not to lose the monthly adaptation benefit paid by local social assistance services (Gracz 2007: 82). The strategy used by the refugees is parallel to the one used by Poles who are registered as unemployed; however, it can also be argued that it is simply a reaction to the unlawful and harmful practice of depriving recognized refugees of their adaptation benefit⁹ the moment they find legal employment, as it punishes those whose integration in Poland is more successful (Gracz 2007: 81–82).

There is a complex set of reasons behind the illegal employment of foreigners in Poland. They are similar to the unregistered employment of nationals in some points, but differ in others. In order to explain this phenomenon, one must refer to its economic, legal and social rationale. One of the main reasons for its occurrence would seem to be the shortage of Polish manpower willing to do low-paid, physical work. In agriculture, foreigners, mostly Ukrainians, willing to do seasonal work on Polish farms entered the labour market in the 1990s and soon became

⁹ According to articles 7.11 and 91 of the Act of 12th March 2004 on social assistance [Ustawa z dn. 12 marca 2004r. o pomocy społecznej], *Dziennik Ustaw* 2004, No. 64, item 593 (and as further amended), refugees are entitled to assistance during the integration process. This assistance includes a monthly benefit of up to PLN1149 per person, the purpose of which is to cover expenditure on subsistence and the costs of a Polish language course. According to the Ordinance of the Minister of Social Policy on the integration of refugees [Rozporządzenie Ministra Polityki Społecznej w sprawie integracji uchodźców], a refugee may be temporarily deprived of this benefit only in certain defined cases, such as failing to attend the language lessons, being put on trial for a crime or if they stay for more than one month in a health care institution (Jasiakiewicz, 2006: 9, 18–23).

indispensable, as farmers were unable to find a reliable Polish workforce prepared to accept the low salaries which they were able to offer. Even in regions with high unemployment levels, either the farmers could not find Poles who were willing to perform hard physical work for the PLN 2.5 per hour or the Polish workforce soon ceased coming to work, often as a result of alcohol abuse (E2PL). The general problem of a shortage of low-skilled labour was aggravated after Poland's accession to the EU, when thousands of people willing to accept unskilled jobs decided to undertake them for much higher pay in the UK or Ireland. In addition, Polish construction workers migrated to other EU countries, not only due to the prospect of better salaries, but also as a result of better and safer work conditions (TU1PL). Labour market mismatches persist, despite the high registered unemployment figures in some sectors; Poles who declare themselves to be, for example, qualified construction workers but remain unemployed are either not interested in legal employment or do not possess the qualifications they declare themselves to have.

Under Polish labour regulations, the high gross costs of salaries are a factor which inclines entrepreneurs to employ both nationals and foreigners illegally. Foreigners are employed mostly in low-paid jobs, where the cost of labour is the crucial factor for the economic viability of the workplaces. Some jobs can only exist as undeclared, since adding the tax and social contributions would be beyond the limit of profitability for the employers. In their opinion, they employ foreigners illegally not to gain extra profit, but in order to gain any income at all (Gmaj 2005: 7–9).

An additional cost specific to the legal employment of foreigners is the cost and procedure of obtaining a work permit. Until very recently, the fee for the permit was ca. EUR 240, the equivalent of the minimum wage, which was disproportionately high in relation to the employment of a low-paid worker in a seasonal job. Although the fee has been significantly reduced to PLN 100, which is approximately EUR 28, for a first-time permit, the length and complexity of the procedure, which involves a labour market test and collecting and translating numerous documents, are discouraging. Thus, cases have been recorded, where employers who intended to employ a foreigner legally, for example, as a carer for an elderly person, and then simply gave up the attempt when confronted with the bureaucratic requirements (Bieniecki et al. 2005: 45). However, this part of the Polish regulations is undergoing a transformation, since not only has the cost of the work permit been so significantly reduced, but new categories of foreigners are also now exempt from the work permit requirement.

Another disadvantage to the legal employment of foreigners is the lack of flexibility of the regulations which apply to such employees. These impose costs or conditions which do not allow entrepreneurs to manage the workers economically and efficiently. For example, in construction and farming, the work is seasonal and linked to the weather cycle. It is hard to apply the labour regulations to such a situation and it is thus difficult and expensive to employ people in accordance with the law. The work permit states the position which the foreigner

will fill, as well as the terms of reference, in detail, and the employer may not promote such a person or move them to another branch or tasks without re-applying for the permit. In comparison, illegal workers are flexible and can be allocated more efficiently. Moreover, the permitted period of legal employment is too short to allow the employer to properly train the worker, especially the three months allowed under the scheme of work without a permit for the citizens of neighbouring countries. For example, employers in construction would prefer to have continuity of workers for 18–24 months, which is the average length of a single construction contract (E1PL). This discrepancy between the employers' economic needs and the legal regulations may also lead to the illegal prolongation of the foreigner's work.

In addition, foreign workers, especially short-term economic migrants, wish first of all to maximise their income. They are not concerned with their or their employers', failure to pay social system contributions as they feel they would gain no profit from this anyway. In the short-term perspective, legal work is less profitable for them, as their take-home pay would then be lower. In this sense, foreign workers share the interest of the employers in keeping the overall costs of their labour low.

Both employers and employees are also inclined towards illegal employment due to the high social acceptance of illegal work in general¹⁰. As stated in the previous section, the acceptance of illegal work carried out by the registered unemployed is high in Poland. Illegal work performed by foreigners is perceived as a necessity for the Polish economy; as one employer put it: "It's in our common interest to have the work done by the Ukrainians or Belarusians or others who are paid under the table and work illegally." (E1PL). At the same time, the availability of illegal employment can also be perceived as positive for the immigrants, as it allows some categories of foreigners to work and support themselves. "Some flexibility on the issue is good for society. Yet the best and safest situation is legal employment." (NGO1PL).

In addition to consensual engagement in unregistered employment, cases of exploitation and forced labour were identified, the majority of them in the sex business sector. Such exploitation, regardless of the aim, whether sexual or not, is a crime named 'trade in persons'¹¹ under Polish law and has been punishable since 1969 (Karsznicki 2007: 46–47).

According to various estimates, the proportion of foreigners among prostitutes in Poland varies from 25% among street prostitutes (Bianchi, Popper and Luksik 2007: 38) to 40% among ca. 10 000 prostitutes working on the roads (IHF 2000: 45). In the late 1990s, it was

¹⁰ On the other hand, one has to remember that not all employers are keen to employ foreigners, probably due to the lack of information on the subject. In the opinion of an NGO expert (NGO1PL,) some are very concerned, or over-careful, unwilling even to employ foreigners with the right to work, such as refugees or spouses of Polish citizens.

¹¹ The present Penal Code [Kodeks karny] of 1997 states: "A person who trades in human beings, even with their consent, is subject to punishment by imprisonment for a minimum period of 3 years." [Art. 253., § 1. "Kto uprawia handel ludźmi nawet za ich zgodą, podlega karze pozbawienia wolności na czas nie krótszy od lat 3"].

estimated that half of these people had been trafficked to Poland by organised crime groups (IHF 2000: 46). In the period between 1995–2007, there were 434 investigations into cases of trade in persons in which Poland was the victims' country of origin, destination or transit for the victims. Among the 2855 victims identified, there were 549 foreigners, the majority being citizens of Belarus (245) or Ukraine (198). The traders were usually of the same nationality as the victims; among the foreigners accused of trading in human beings between 2001 and 2007 Bulgarians (42) and Ukrainians (29) were most numerous¹². Transit through Poland mostly involved victims from Lithuania, Latvia or Moldova (Karsznicki 2007: 55).

To date, there has been only one case of trade in persons outside the sex business which ended with the persecutors receiving a sentence for trading in persons under article 253, § 1 of the Penal Code. The victim was a Vietnamese man who was being forced to work in a marketplace by his compatriots as a means of paying off his debt for having been brought into Poland illegally (G2PL, NGO2PL, Border Guards 2007: 66–67). There are also foreigners forced into begging by organised crime groups such as a Moldavian-Ukrainian group, who lured women by offering them work in Poland and then kidnapped their children in order to force the mothers into begging (Świerczyńska, Walczak; 2007a,b).

Little is known of slavery in the home in Poland. Of the only two such cases handled by La Strada Foundation, an NGO specialising in the fight against human trafficking and slavery, one has already been dismissed. The victim initially agreed to being employed illegally by a family of Polish farmers, but was then gradually terrorised and deprived of freedom in their house. However her testimony was not sufficient to punish her persecutors for enslavement¹³. In the opinion of the expert (NGO2PL), such cases are very difficult to prove, as the definition of slavery provided in the Polish Penal Code is very narrow¹⁴. If the person came voluntarily and later became enslaved and, in particular, if she somehow managed to escape, her chances of the court's finding that she was enslaved are low.

¹² Data on trading in human beings published by the national prosecutor's office: <http://www.mswia.gov.pl/portal/pl/391/2001/> (accessed on 14.04.2008).

¹³ The victim was a Ukrainian woman who undertook to work illegally on a Polish farm. The employers gradually deprived her of her documents, food and pay and used psychological terror against her. The victim could leave the farm, for example, to go to a local shop, but remained in the abusive relation for a lengthy period of time, as she became depressed and was intimidated. She only decided to escape when she met the Pole who helped her. However, the prosecutor found other Polish witnesses to be more trustworthy and dismissed the investigation. Afterwards, the victim's lawyers managed to bring the case to court but it was eventually dismissed. (NGO2PL, Surmiak-Domańska, 2007).

¹⁴ Art. 189., § 1 of the Penal Code of 1997 states: "A person who deprives another of freedom is subject to a period of imprisonment from 3 months to 5 years." (Art. 189., § 1. "Kto pozbawia człowieka wolności, podlega karze pozbawienia wolności od 3 miesięcy do lat 5.") It is supplemented by another regulation, Art.8: "A person who gives another person into the state of slavery or trades in slaves is subject to a period of imprisonment of not less than 3 years." (Art. 8. "Kto powoduje oddanie innej osoby w stan niewolnictwa albo uprawia handel niewolnikami, podlega karze pozbawienia wolności na czas nie krótszy od lat 3."); the Act on Introductory regulations to the Penal Code of 6th June 1997 [Ustawa z dn. 6 ^{czerwca} 1997r. Przepisy wprowadzające kodeks karny] Journal of Laws [Dziennik Ustaw] 1997, No. 88, item 554.

Expert opinion holds that only a small proportion of the victims of forced labour or forced prostitution decide to testify in court. Often the victims are identified as foreigners staying in Poland illegally and are then simply deported immediately (NGO2PL, Karsznicki 2007: 52). Cases of forced labour are also hidden because the consulates help the victims to return to their countries without addressing the underlying problem; their duties define the rescue of their citizens as being of a higher priority than bringing the criminals to justice (NGO2PL). Therefore, the cases which are actually uncovered should be treated as no more than examples of criminal phenomena on a larger, albeit unknown, scale.

3 Combating the illegal employment of foreigners – an analysis of policy and the law

3.1 Policy and politics to combat the illegal employment of foreigners in Poland: general view

As described above, the illegal employment of foreigners became a problem only after 1989, when border crossing rules were liberalised and the considerable inflow of petty traders from the East gradually turned into various forms of hidden seasonal or temporary employment in certain sectors of Polish economy (Iglicka 2001). At the same time, in the first half of the 1990s, along with the liberalisation of rules of movement, rules restricting the access of foreigners to the Polish labour market were already being established, as if in anticipation of the labour market disturbances that were to result from the process of economic and political transformation. The first regulations, issued in 1989 and 1991, introduced a work permit procedure based on the examination of the labour market¹⁵. Along with the growing problems of rising levels of unemployment in Poland, the work permit rules became more strict and complex. This was intended to serve the primary role of the system, that is, the protection of the Polish labour market against the inflow of foreign workers.

Given this primary aim of protecting the labour market, the illegal employment of foreigners was treated as harmful to that market and, as such, it was officially strictly combated by consecutive governments. From the outset, the penalisation of illegal employment has been the foundation of state policy towards the illegal employment of foreigners. As early as 1991, employing a foreigner without a work permit, in a case where one was required, was penalized by the law. The law of 1994¹⁶ introduced the definition of the illegal employment of a foreigner as employment without the necessary work permit, and established financial sanctions to be imposed on both employer and foreigner. At the same time, the labour offices were given inspection and control competences in the field.

¹⁵ The Act on Employment of 29th December 1989, [Ustawa z 29 grudnia 1989 r. o zatrudnieniu], *Dziennik Ustaw* 1989, No. 75, item 446, The Act on Employment and Unemployment of 16th October 1991 [Ustawa z 16 października 1991 r. o zatrudnieniu i bezrobociu], *Dziennik Ustaw* 1991, No. 106, item 457.

¹⁶ The Act on Employment and Counteracting Unemployment of 14th December 1994 [Ustawa z 14 grudnia 1994 r. o zatrudnieniu i przeciwdziałaniu bezrobociu], *Dziennik Ustaw* 1995, No. 1, item 1.

Currently, the Act on the Promotion of Employment and Labour Market Institutions of 2004¹⁷ provides definitions of both illegal employment and the illegal employment of foreigners. According to the act, illegal work performed by foreigners means the carrying out of work without a work permit, with the exception of cases when a work permit is not required, or the performing of work in a position, or under conditions, other than specified in the work permit, or not in line with the declared purpose of stay, and without a contract of employment (Article 2 (14)). ‘Illegal’ means both the carrying out of work by a foreigner under the conditions specified and the giving of work to a foreigner under those conditions (Article 2 (13e, 13f)). Moreover, the law widely defines the work of a foreigner as undertaking employment or other gainful occupation, or being a member of the board of directors of given forms of legal persons in Poland.

The fundamental idea behind penalizing both actions is the presumption that any illegal, concealed employment is harmful to the labour market (I1PL). It is worth noting that the law penalises both the undertaking of employment without the necessary work permit and the employment of a foreigner without the necessary work permit. This double-penalisation is then reflected in the fines and administrative sanctions to be imposed on both the employee and the employer and provided for by the law.

The work permit system, established with a view to regulating access to the Polish labour market, was originally also intended to play a preventative role in the illegal employment of foreigners. In reality, as further analysis will demonstrate, as a result of the high administrative and financial burden connected with the work permit procedures, the system proved to be one of the decisive factors in prompting foreigners to undertake illegal employment. However, over the course of time, more and more exceptions to the work permit obligation were introduced (Kicinger 2007). Currently, further efforts to streamline the work permit procedure are also under way¹⁸.

Regularization, a form of decreasing the numbers of irregular migrants often applied in some European countries, has been used only twice, and with great reluctance. One-off regularization measures were launched in 2003 and in 2007, yet the criteria for regularization were very strict and thus the results of the action were extremely limited. What is even more significant is the fact that no possibility for constant regularization exists. This reluctance to implement any form of constant regularization constitutes a very important policy trait and

¹⁷ The Act on the Promotion of Employment and Labour Market Institutions of 20th April 2004 [Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy], *Dziennik Ustaw* 2004, No. 99, item 1001.

¹⁸ In 2007, the Ordinance of the Minister of Labour and Social Policy of 17th October 2007 on the fee relating to the submission of an application for a work permit for a foreigner [Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 17 października 2007 r. w sprawie wysokości wpłaty dokonywanej w związku ze złożeniem wniosku o wydanie zezwolenia na pracę dla cudzoziemca], *Dziennik Ustaw* 2007, No. 195, item 1409, significantly reduced the cost of a work permit from 936 PLN to 50 or 100 PLN, depending on the period of work covered by the permit.

has numerous social results. It adds to the severity of regulations, and in practise, makes it impossible for any foreigner caught in illegal employment or in an illegal stay to revert to a legal status¹⁹.

In general, the phenomenon of the illegal employment of foreigners and, likewise, other issues connected to immigration have not been politicised (Kicinger and Koryś 2008). Political parties in Poland show little interest in migration issues and have not been involved in the migration policy-making process to any significant extent. Only recently did the populist agrarian party Samoobrona, forming part of a government coalition in 2006–2007, devote some attention to the recruitment problems faced by farmers and successfully advocated for the liberalisation of admission rules for Ukrainian and other seasonal workers from the East²⁰.

As with the political parties, the media have shown little interest in migration issues in general, and in the illegal employment of foreigners in particular. Recently most media attention relating to migration has been focused on post-accession emigration from Poland. In this regard, the preventive and educational role of media coverage cannot be underestimated. Reports on “Polish work camps” or other cases of a tragic fate met by Polish migrants who knowingly or unknowingly were involved in illegal employment have, in all likelihood, discouraged a number of potential illegal workers from undertaking the risk of working illegally abroad²¹. However, migration inflows have not commanded the same degree of interest, though labour shortages on the Polish market have occasionally attracted media attention. These reports have pointed to labour needs, the complicated work permit procedure, and the problems with recruitment in agriculture or construction²². They have, on occasion, picked up and highlighted selected stories relating to human trafficking²³. However, reports on these issues have not elicited any serious public debate. Thus it is hard to estimate the media influence on public opinion regarding the issue of the illegal employment of foreigners²⁴.

Combating the illegal employment of foreigners is a non-politicised issue which has awakened a relatively small interest in the media and almost none among the political parties. Therefore, in regard to policy-making, public opinion considerations, relevant in other countries, have been of limited importance in the case of Poland.

¹⁹ An exception to this exists in the possibilities provided for victims of human trafficking; see Section 3.3.

²⁰ Since 2004–2005, when the media reported on the high post-accession emigration wave from Poland, several political parties have specified their programmes for emigration issues, yet with no reference to the issues of inflow.

²¹ It has to be noted, however, that previously the media played an important role in the creation of post-2004 emigration hype, which resulted in unknown numbers of unprepared and vulnerable emigrants who were susceptible to exploitation by intermediaries or employers abroad.

²² E.g. Bojarski, (2006); Narbutt and Marszałek, (2006), Wielgo, 2005a;b; Karp, 2007.

²³ E.g. Surmiak-Domańska, 2007; Cichy and Świerczyńska, 2007; Borowiec, 2005; Zieliński, 2006.

²⁴ The paragraph is based on regular monitoring of all the most important dailies and weeklies in Poland, which has been carried out regularly by CEFMR staff since at least 2004.

The main actor involved in policy-making in the field is the government administration, with the leading role being played by the Ministry of Labour and Social Policy (MLSP: *Ministerstwo Pracy i Polityki Społecznej*). The Ministry is responsible for all issues relating to employment, including efforts to combat the illegal employment of both foreigners and nationals. What is worth noting is that all the laws concerning employment are created via the social consultation mechanism that encompasses government representatives, employers' organisations and trade unions. The role of social dialogue in the regulation of working relations is well-developed and constitutionally grounded in Poland. It functions quite efficiently at the macro-scale, with the large federations of employers' organizations and of trade unions voicing their major concerns during meetings of the Tripartite Commission. All changes to the law on employment²⁵ were made after consultation within this Commission.

Similar social consultations are carried out as part of the legislative procedure for Ministry ordinances. The proposal for a new ordinance, or for amendments to the law, are sent to the social partners, that is, to the federations of trade union and employer organizations. The opinions put forward by the social partners usually follow very predictable directions, with employer organizations supporting any government initiatives to liberalize access to labour market and advocating even more simplified procedures, whereas the representatives of trade union federations display a high level of distrust toward any liberalization efforts, treating them as a threat to the Polish unemployed (G3PL).

Trade unions argue that their primary interest is to guarantee better pay and work conditions for legal employees. Thus, they obviously promote such regulations as would decrease the opportunity for illegal employment, such as winning contracts by proposing an unrealistic calculation of labour costs (TU1PL). They often perceive the employment of foreigners as a form of wage dumping and therefore, more often than not, they disapprove of government proposals to liberalise access to the Polish labour market²⁶, rejecting the government rationale and claiming that what Poland lacks is not workers but decent wages²⁷.

Characteristic in this regard is the position of trade unions in the construction sector. They acknowledge the existence of labour shortages in certain professions within the sector, yet also claim that their primary interest is in a rise in wages. Labour shortages, in their opinion, facilitate an increase in salaries, whereas the inflow of foreign workers might have the opposite effect (TU1PL). The *Budowlani* Trade Union is especially active in lobbying for

²⁵ The name of the act has undergone several changes since 1990. Currently, it bears the title of the Act on the Promotion of Employment and Labour Market Institutions (Ustawa o promocji zatrudnienia i instytucjach rynku pracy) *Dziennik Ustaw* 2004, No. 99 item 1001.

²⁶ Opinion of the All-Poland Alliance of Trade Unions/Ogólnopolskie Porozumienie Związków Zawodowych (OPZZ) of 19.09.2007 on the proposal of the Ministry of Labour and Social Policy to reduce the work permit fee <http://www.psz.praca.gov.pl/main.php?do=ShowPage&nPID=867686&pT=details&sP=CONTENT,objectID,873627> (12.11.2007). OPZZ claims that the reduction in the cost of the work permit will reinforce the treatment of foreign workers as a source of cheap labour.

²⁷ As above.

construction workers. Interestingly, *Budowlani* addresses the issue of the employment of foreigners in a comprehensive way, calling for more clear and transparent regulations on the labour market in general, and only then for the development of specific regulations allowing selected groups of foreigners easier access to Polish labour market.

Unlike the trade unions, employers actively support the government in any initiatives that facilitate their access to foreign labour. They welcomed the Ministry order allowing workers from the neighbouring countries to undertake short-time legal employment in Poland without the obligation to obtain a work permit²⁸. However, they strongly advocated that the 3-month restriction placed on employment without a work permit for Ukrainian, Russian and Belarusian workers be abandoned, as it failed to meet the expectations of employers, given the need to train the workers first²⁹. Faced with what they declare to be ever-growing difficulties with worker recruitment, employers are actively pressurising the government to legislate less restrictive terms for the hire of foreign workers.

It is among the contrasting demands made by the social partners that the Ministry ordinances regulating the access of foreigners to the Polish labour market are issued. What is worth noting is the fact that the Ministry is not obliged to take these opinions into account, as the role played by the organizations concerned is merely consultative.

Apart from the Ministry of Labour and Social Policy, the Ministry of the Interior and Administration (MIA: *Ministerstwo Spraw Wewnętrznych i Administracji*) is indirectly interested in the issues relating to the employment of foreigners and is thus involved to some extent in the policy-making process. The MIA is the ministry responsible for migration policy matters, yet with the exclusion of those issues that touch on the employment of foreigners, as these fall within the competence of the MLSP. This division of competence forces both ministries to cooperate on labour immigration matters. The cooperation is not always without tension, for example, despite the MIA's declarations that it would welcome simplified legalisation procedures for people willing to work legally in Poland (G3PL), the MLSP's proposals to meet the needs of the labour market by allowing more labour immigration from the Far East were hindered by the MIA for reasons of security (G2PL, G3PL). This tension between the challenges of security and the needs of the economy, which are represented by

²⁸ The Ordinance of the Minister of Labour and Social Policy of 27th June 2007, amending the ordinance on work carried out by foreigners without the obligation to obtain a work permit [Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 27 czerwca 2007 r. zmieniające rozporządzenie w sprawie wykonywania pracy przez cudzoziemców bez konieczności uzyskania zezwolenia na pracę], *Dziennik Ustaw* 2007, No. 120, item 824.

²⁹ The stance taken by the Confederation of Polish Employers on the draft Ordinance of the Minister of Labour and Social Policy on the fee relating to the submission of an application for a work permit for a foreigner [Stanowisko Konfederacji Pracodawców Polskich dotyczące projektu rozporządzenie Ministra Pracy i Polityki Społecznej w sprawie wpłaty dokonywanej w związku ze złożeniem wniosku o wydanie zezwolenia na pracę dla cudzoziemca],

<http://www.psz.praca.gov.pl/main.php?do=ShowPage&nPID=867686&pT=details&sP=CONTENT,objectID,873627> (12.11.2007).

the two ministries will, in all probability, be a source of further clashes within government administration³⁰.

The recently established governmental Working Group on Migration (Zespół ds. Migracji) has become a forum for the presentation of these conflicting interests. The Group constitutes a consultative and coordinating body that gathers high ranking officials from various Ministries and other selected central bodies with an interest in migration affairs, such as the Border Guard (BG: Straż Graniczna) and the Central Statistical Office³¹. A decisive role within the group was secured to the representatives of the Ministry of the Interior and Administration, as the Department of Migration Policy, which forms a part of this Ministry, holds coordinative competences in the field of migration policy. The aims of the Group are to initiate legal and institutional changes in the field of migration and an exchange of information between the ministries, as well as monitoring developments at the EU level³². In general, inter-agency cooperation within various government bodies in Poland is still in the early stages.

The main agencies involved in the implementation of government policy on the illegal employment of foreigners include the Border Guard (BG), the Customs Service (CS), and the National Labour Inspectorate (NLI: *Państwowa Inspekcja Pracy*).

In July 2007, the National Labour Inspectorate became the largest institution involved in the control of legality in the employment of foreigners. The institution has a tradition of over 80 years in the controlling of the employment law, with a special focus on the regulations for health and safety at work. However, the authority to control legality in the employment of foreigners, first established in 1995, was attached to various institutions and it was only in 2007 that this competence was passed to the National Labour Inspectorate.

Since 2003, the Customs Service has also had control over the legality of the employment of foreigners among its competences. This organisation naturally focuses its activities on the tracking of illegal goods, which are often connected to illegal trade activities being carried out by foreigners.

The Border Guard has no competence to check the legality of employment, though it has the competence to check the legality of any foreigner's stay in Poland. Understandably, Border

³⁰ The MIA opinion on the proposed reduction of fees for a work permit highlighted the risk that the entire work permit procedure could be open to abuse and a channel for illegal immigration could be created if the fees were too low, <http://www.psz.praca.gov.pl/main.php?do=ShowPage&nPID=867686&pT=details&sP=CONTENT,objectID,873627> (12.11.2007).

³¹ Decree No. 12 of the Prime Minister, of 14th February 2007, establishing the Group on Migration / Zarządzenie Nr 12 Prezesa Rady Ministrów z dnia 14 lutego 2007 r. w sprawie utworzenia Zespołu do Spraw Migracji (unpublished), <http://kprm.gov.pl/bip/070216migracja.pdf> (12.11.2007).

³² In Resolution No. 2 of 15th October 2007, the Group pointed to the need for the gradual facilitation of access to Polish labour markets for foreigners, as a result of labour shortages. Moreover, it stressed that the employment of foreigners must be accompanied by an effective monitoring system, as well as activities to combat illegal forms of employment.

Guard officers encounter various cases of illegal work when checking the legality of a person's stay and thus the organization plays an important, yet indirect role in the system controlling work being carried out by foreigners.

Apart from government agencies, there are almost no organisations actively engaged in the policy on the illegal employment of foreigners. There are no NGOs specializing in foreigners' employment rights. The Helsinki Foundation for Human Rights, a major NGO specializing in the provision of legal advocacy for, and legal advice to, foreigners, admits that they seldom encounter employment-related problems (NGO1PL). The focus of the organization's engagement has been to liberalise access to labour market for selected categories of migrants; for example, it successfully lobbied for the regulations that entitle the spouse of a Polish national to employment without the obligation to obtain a work permit.

External factors have not significantly influenced Polish policy; EU influence has also been minimal, as this is not an area covered by Community regulations. Yet, some signs that Polish policy makers have been 'looking to the West' were revealed in the research. The National Labour Inspectorate admitted that the fines for illegal employment were raised after they had conducted research in other EU countries and found the Polish rates to be extremely low in comparison with the countries studied (I1PL). In contrast, in their attempt to reduce the work permit fees, the Ministry of Labour and Social Policy argued that they were extremely high in Poland and that the lowering of the fee was in line with the level of fees in most European countries³³. Also evident was the influence of the Schengen accession criteria, which made Polish politicians and government officials very cautious about giving the impression that Poland is easily accessible³⁴. Recourse to the Western European experience of massive illegal stays and employment, and the security challenges arising from this was also important to some of the respondents in the study (G3PL).

To sum up, several factors have proved to be important to the Polish policy for combating the illegal employment of foreigners. In the first place, the country's economic situation should be borne in mind. The high unemployment levels of the 1990s and the turn of century served as a justification for the very restricted access by foreigners to Polish labour market. This, combined with the labour market's need for cheap unskilled workers, resulted in large numbers of illegal seasonal or temporary workers from the East. The policy to combat the phenomenon was not effective and, in practice, included a tacit tolerance towards it.

The policy was created by government with its social partners acting in an advisory-only capacity. The social dialog, however, served as a forum to present the conflicting views of the labour market held by the trade unions and employers' organisations. Government decisions

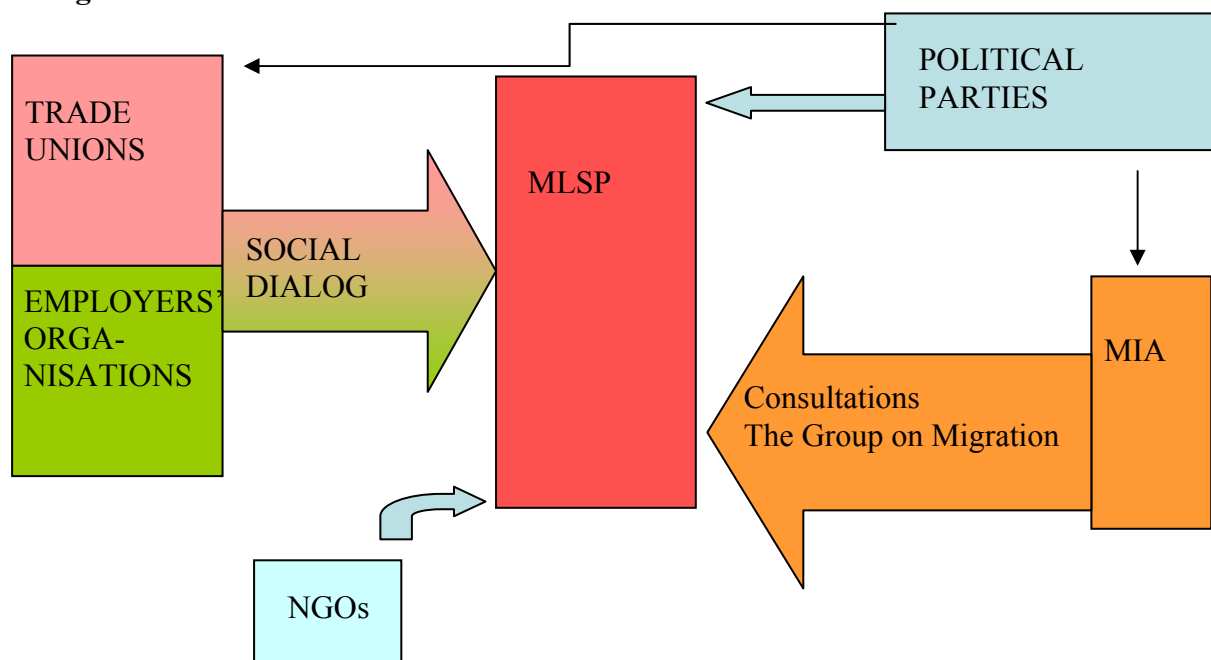
³³ Background and justification for the proposal of the regulation:
<http://www.psz.praca.gov.pl/main.php?do=ShowPage&nPID=867686&pT=details&sP=CONTENT,objectID,873627> (3.12.2007).

³⁴ "in the case of persons planning to arrive to Poland (...) a single declaration that they want to undertake self-employment would offer too easy an access to the Schengen area" (G1PL).

underwent a gradual evolution from highly restrictive measures, in line with trade union arguments, to cautious steps towards liberalisation that took better account of the employers' needs. However, the rather slow and reactive responses to changes on the labour market proved to be insufficient in terms of creating effective employment legalisation, while emigration and economic growth after 2004 led to labour market deficiencies, especially in labour-intensive sectors such as agriculture and construction.

In general, just as with other sub-fields of migration policy, the way in which policy is made in the area of combating the illegal employment of foreigners in Poland tends to be administrative and dominated by bureaucracy. The role of the media and public opinion is of limited relevance and the opinions of the social partners are merely consultative in nature. Some influence on the part of political parties has been noted. However, in practice, the policy is created by government ministries in a state of some tension between the Ministry of Labour and Social Policy's cautious pro-market approach and the Ministry of the Interior's more security-orientated, and thus more protectionist, approach. The scheme of policy actors is presented in Figure 1.

Figure 1: A scheme of policy actors in the field of combating the illegal employment of foreigners



Source: authors' elaboration

A very special sub-field of policy against the illegal employment of foreigners is the policy of combating the human trafficking. Although, as we stated in the introduction, human trafficking represents the most drastic form of exploitation and forms only a part of the continuum of exploitation, policy in this area is, in fact, shaped by agencies and under a far greater international influence than in case of general policy for the combating the of illegal

employment of foreigners. Government policy in this area focuses on the prosecution of the crime and on the protection of the victims and is often carried out in close collaboration with NGOs.

Under the provisions of article 253 of the Polish Penal Code, introduced in 1997³⁵, trading in human beings constitutes a crime. Depriving a person of freedom (article 189), subjecting them to unlawful menace (article 190) and procuring for prostitution (article 203 and 204) are also penalised. In these areas, Poland has been always very active in the international arena, adopting and ratifying the ILO Forced Labour Convention³⁶, the UN Palermo Protocol³⁷, and as an EU member, has implemented EU laws in the field³⁸. The crucial article, 253 of Polish Penal Code, states that a person who trades in human beings is subject to a penalty of at least 3 years imprisonment. However, the Penal Code does not itself specify what is to be understood as trade in human beings, and various problems have arisen with regard to judges' interpretation of this article (Ministry of the Interior and Administration 2007, NGO2PL). Therefore, efforts have been undertaken in order to introduce the definition of trafficking directly into the Penal Code (Ministry of the Interior and Administration 2007, NGO2PL).

Government engagement in the field is based on a very close collaboration with selected NGOs specializing in providing assistance to victims of human trafficking. La Strada plays the main role here, but Caritas, ITAKA and the Nobody's Children Foundation are also involved. La Strada has organised seminars and training for government officials, officers of the Border Guard, prosecutors, the police and judges. Moreover, protection programmes for the victims or witnesses of human trafficking practices is implemented by La Strada on the basis of an agreement between the organisation and the Ministry of the Interior and Administration. All state authorities, including the Ministries, admit that they cooperate closely with La Strada, which serves only to reinforce its role and increases the dependence of the entire system of victim protection on this one NGO (Wiśniewski 2007: 175).

In government administration, the leading role in combating trafficking in human beings is played by the Ministry of the Interior and Administration. It leads and coordinates the Group on the Combating and Prevention of Human Trafficking (Zespół ds. Zwalczania i Zapobiegania Handlowi Ludźmi), established in 2004. The Group, which gathers representatives from various ministries and central agencies, as well as NGOs in the field, is intended to establish the direction to be taken by initiatives, coordinate cooperation at both

³⁵ Penal Code [Kodeks karny], *Dziennik Ustaw* 1997, No. 88, item 553.

³⁶ Convention concerning Forced or Compulsory Labour, *Dziennik Ustaw* 1959, No. 20, item 122.

³⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, *Dziennik Ustaw* 2005, No. 18, item 160.

³⁸ Council Framework Decision 2002/629/JHA of 19th July 2002 on combating trafficking in human beings; Council Directive 2004/81/EC of 29th April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

central and local level and elaborate and assess the implementation of national plans to combat and prevent human trafficking.

Since 2003, national plans for combating and preventing human trafficking have been set biannually. The current plan, for the years 2007–2008, accepted by the Government in April 2007, provides for a wide range of training for various institutions involved in the fight against human trafficking, improvements in the practical coordination of cooperation between the institutions and a screening of the law in order to improve current legal regulations and, especially, to introduce a more precise definition of human trafficking into Polish legislation³⁹.

3.2 Prevention of the illegal employment of foreign workers

Effective prevention of illegal hiring and illegal employment needs to be based on existing possibilities for lawful behaviour on the one hand, and on effective control and punishment mechanisms on the other. Moreover, a state can actively engage in the promotion of the desired social behaviour and actively persecute non-compliance with the law. The preventive role of punitive measures must thus be taken into account.

The system for the regulation of labour immigration to Poland is based on the work permit scheme. The system was designed with the primary aim of protecting the Polish labour market against the inflow of foreign labour. The main rule behind the establishment of the system was that employment of foreigners must be complementary to, and not competitive with, the employment of the native labour force. In consequence, the labour market test, a system whereby the employer must check the availability or otherwise of a Polish, or, since 2004, an EU, candidate for the post, was made very demanding, requiring the employer to prove that he/she has actively tried to recruit a Polish or EU worker. A vacancy announcement in the local state labour office is considered insufficient in this regard⁴⁰. This is combined with the large number of documents the employer is obliged to submit in order to receive first the declaration that the work permit will be issued and then the permit itself. The same procedure for obtaining a work permit is provided for even if the potential employer is a physical, and not a legal, person. The work permit is granted only to a given employee for a limited period of time, and only covers a specified employer and a specified position. In consequence, the rigidity of the system may force even those foreigners who have obtained a work permit but are, even temporarily, delegated to another post within the company, into an illegal position. In fact, it is hardly possible to promote a foreign worker, as this would mean re-opening the work permit procedure. In terms of domestic services, the lack of a simplified

³⁹ National Programme to Combat and Prevent Trafficking in Human Beings 2007–2008 [Krajowy Program Zwalczenia i Zapobiegania Handlowi Ludźmi na lata 2007–2008], [http://www.mswia.gov.pl/portal/pl/390/2174/\(3.12.2007\)](http://www.mswia.gov.pl/portal/pl/390/2174/(3.12.2007)).

⁴⁰ §3.2, Ordinance of the Minister of Labour and Social Policy of 21st July 2006 on the procedure and conditions for issuing a work permit to a foreigner [Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 21 lipca 2006 r. w sprawie trybu i warunków wydawania zezwolenia na pracę cudzoziemca], *Dziennik Ustaw* 2006, No. 141, item 1002.

route for employing a foreign worker makes it administratively costly and also discourages employers from legalising their domestic staff.

Until recently, the high fiscal cost of the work permit, which required the potential employer to pay a fee at the level of the minimum monthly salary in Poland, also meant that legal hiring was even less economically beneficial, especially in the case of seasonal or short-term employment. However, in October 2007 the fees were significantly reduced⁴¹, which could be perceived as the first step towards making legal hiring within the work permit procedure more attractive to employers.

Nonetheless, despite the recent changes, in sum, the high administrative cost of legal hiring which results from the work permit procedure, makes the system de-facto discouraging as regards the legal hiring of foreigners.

However, there is a group of foreigners who are excluded from the very possibility of applying for a work permit, namely asylum seekers. They are not allowed to work during the procedure reviewing their request for asylum, with the minor exception of cases where the procedure lasts for more than a year for reasons beyond the applicant's control. In such an event, the applicant can apply for a certificate confirming that the procedure has lasted for over a year. The certificate must specify the period of time expected for the refugee application proceedings to be completed. The applicant is entitled to enter the work permit procedure for that period of time only and in accordance with the general work permit rules⁴². In practice, asylum-seekers are thus excluded from the possibility of legal employment and any work or economic activity performed by them is illegal.

All in all, the work permit system, designed to regulate the inflow, in fact constitutes what is, to all intents and purposes, a blockade against legal employment and thus prompts many employers to illegal hiring, as it does not constitute a real alternative to this practice. In general, the difficulties imposed by the work permit system have been vividly highlighted by the media⁴³ and confirmed by experts (NGO1PL).

Given all these factors, it is not the work permit system that regulates legal economic immigration, but the numerous exceptions from that system which constitute the channels of access to the Polish labour market. At the beginning of the 1990s, only foreigners with refugee status or a permanent residence permit were excluded from the obligation to obtain a

⁴¹ Ordinance of the Minister of Labour and Social Policy of 17th October 2007 on the fee relating to the submission of an application for a work permit for a foreigner [Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 17 października 2007 r. w sprawie wysokości wpłaty dokonywanej w związku ze złożeniem wniosku o wydanie zezwolenia na pracę dla cudzoziemca], *Dziennik Ustaw* 2007, No. 195, item 1409.

⁴² Article 30a of the Act on Granting Protection to Aliens within the Territory of the Republic of Poland of 13th June 2003 [Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej], *Dziennik Ustaw* 2007, No. 120, item 818.

⁴³ K. Jaroszyńska, "Czekają od nocy" [Waiting from the small hours]. *Życie Warszawy* 8.11.2007; J. Wilczak, "Bratnia pomoc" [A helping hand], *Polityka* 24.03.2007. Wywiad z Markiem Frydrychem; *Biuletyn Migracyjny* No. 13/2007.

work permit. Special exclusions were also provided also for academics and researchers employed at Polish universities and the Polish Academy of Sciences. Over time, numerous other exceptions to the general work permit obligation were introduced. They encompassed, for example, EU nationals and members of their family, long-term EU residents, people enjoying humanitarian protection, the spouses of Polish nationals, foreign language teachers, but only those teaching their native language, and full-time students during the period of the summer vacation⁴⁴.

From the perspective of combating the illegal employment of foreigners, however, none of these exceptions were as important as the changes initiated by the Ministry of Labour and Social Policy as recently as 2006. Since that year, the nationals of Poland's neighbouring countries have been allowed to undertake seasonal, employment in agriculture for a period of up to three months⁴⁵. The regulation only came in force in September 2006, after labour needs in agriculture had peaked. In 2007, this regime was extended to all employment sectors and a special, simplified procedure for registration at labour offices was introduced⁴⁶. Under this regulation, Ukrainian, Russian and Belarusian workers were allowed to work in Poland for no longer than three consecutive months within a six-month period. In 2008, a new Ministry ordinance allowed for a period of work not exceeding 6 consecutive months within a year⁴⁷. The employer is required to issue a certificate of intent to employ a foreigner and register the certificate in the district (*powiat*⁴⁸) labour office. Based on this registration, Ukrainian, Belarusian and Russian workers can apply in their country of origin for a working visa. These opportunities, in fact, constitute legal labour migration schemes which have been implemented in response to the considerable illegal employment of workers from the neighbouring countries. However, as the law has only recently come into force, its regularising effects are not yet known.

The border control system could be also treated as an element for the prevention of illegal stays and of illegal work. According to the Act on Aliens, any person may be forbidden entry and their visa can be invalidated if the foreigner does not submit the relevant documents

⁴⁴ In March 2008, the Act on the Polish Charter [Ustawa z dnia 7 września 2007 r. o Karcie Polaka], *Dziennik Ustaw* 2007, No. 180, item 1280, came in force. It stipulates that people of Polish origin living in the former Soviet Union will be allowed to apply for the Polish Charter, a special certificate confirming their Polishness that will entitle them, for example, to work in Poland without the obligation to apply for a work permit. The results of the law are unknown, as it is unsure how many people will apply for, and how many will receive, the Charter.

⁴⁵ The Ordinance of the Minister of Labour and Social Policy, of 30th August 2006, on work carried out by foreigners without the obligation to obtain a work permit [Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 30 sierpnia 2006 r. w sprawie wykonywania pracy przez cudzoziemców bez konieczności uzyskania zezwolenia na pracę], *Dziennik Ustaw* 2006, Nr 156, item 1116.

⁴⁶ The Ordinance of the Minister of Labour and Social Policy, of 27th June 2007, on work carried out by foreigners without the obligation to obtain a work permit [Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 27 czerwca 2007 r. zmieniające rozporządzenie w sprawie wykonywania pracy przez cudzoziemców bez konieczności uzyskania zezwolenia na pracę], *Dziennik Ustaw* 2007, No. 120, item 824.

⁴⁷ The Ordinance of the Minister of Labour and Social Policy, of 29th January 2008, amending the order on work carried out by foreigners without the obligation to obtain a work permit [Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 29 stycznia 2008 zmieniające rozporządzenie w sprawie wykonywania pracy przez cudzoziemców bez konieczności uzyskania zezwolenia na pracę] *Dziennik Ustaw* 2008, No. 17, item 106.

⁴⁸ Poland's second, intermediary level of regional government.

verifying his/her declared purpose of stay⁴⁹. This legal instrument could be perceived as a barrier to the foreigners entering Poland as declared tourists and then becoming involved in illegal work during the validity period of the tourist visa. According to the Border Guard, about 50 thousand people are refused entry to Poland annually (I2PL)⁵⁰. Consequently, “some of the cases [of illegal employment] are already eliminated at the border” (I2PL).

Access to adequate information on the risks connected with illegal employment plays a crucial role in its prevention. Information campaigns are often used in this field with the aim of raising social awareness. This information is sometimes targeted at specific groups, for example, the groups at the highest risk of engagement in illegal employment, or at employers, detailing the consequences of illegal hiring.

Information campaigns directed at foreigners and dealing with the risks associated with illegal work have not yet taken place in Poland⁵¹, with the exception of specific anti-trafficking information campaigns, which are usually run by NGOs. Among these organisations, La Strada took the initiative and engaged in a varied range of activities in the field of public information. According to La Strada’s mission statement, they aim to give the problem of trafficking a visible profile in terms of public opinion, policy-makers and potential victims. Thus, apart from support for victims of trafficking, La Strada has organised a range of training courses for judges, Border Guard officers, policemen and other officials who may encounter cases of human trafficking. Moreover, campaigns have been targeted specifically at the risk groups, mainly young women, with special information leaflets at the border, or in the Polish consulates in Ukraine (NGO2PL). The government has actively supported these information campaigns and has based its own information efforts and awareness-raising training of various officials on close collaboration with NGOs⁵². Apart from La Strada, Caritas and the Nobody’s Children Foundation have also engaged in the distribution of information leaflets on issues relating to human trafficking. In general, it must be acknowledged that the information campaigns have produced positive results and, according to public opinion surveys, social awareness on human trafficking practices has risen (CBOS 2005).

⁴⁹ Article 21.4 and 48.2 of the Act on Aliens of 2003, and as further amended, *Dziennik Ustaw* 2006, 234, item 1694. In the earlier versions, this paragraph was worded: “(...) circumstances connected with his/her entry into the territory of the Republic of Poland demonstrate that the purpose of his/her entry is other than the one declared, *Dziennik Ustaw* 2003, No. 128, item 1175.

⁵⁰ “If (...) a person has passport, a visa and financial means, but the visa is for specified purpose, say a CO2 visa for the purpose of paying a visit and, at the same time, we discover a work uniform, some addresses (...) than he should have a visa containing the right to work. If he has a visa for the purpose of visit and has the intention of working, then we can refuse entry (...).” (I2PL).

⁵¹ Obviously, the new opportunities for legal employment without the need for a work permit were announced by the Ministry and highlighted by the media. Branches of employers’ organizations also engaged in the campaign promoting the new regulations, by passing information to their members (Związek Sadowników RP, a branch of the fruit farmers’ organization). The same organization promised its active support to any further liberalization measures (E2PL).

⁵² The National Programme to Combat and Prevent Trafficking in Human Beings 2007–2008 [Krajowy Program Zwalczenia i Zapobiegania Handlowi Ludźmi na lata 2007–2008]. <http://www.mswia.gov.pl/porta1/pl/390/2174/>.

In general, the system for the prevention of illegal employment of foreigners in Poland is weak. In certain sectors, the illegal employment of foreigners is relatively high, and it is estimated to exceed their legal employment many times over. One of the reasons for this has been the restrictive work permit system; meanwhile, the recent incentives to encourage legal hiring are insufficient. Although border controls play a role in filtering people heading into Poland with the aim of working illegally, this only addresses the matter to a small extent. There have been no information campaigns on the risks connected with illegal employment and recently, the main preventive measures have been focused on preventing trafficking in human beings.

All in all, the preventive efforts have not overcome the economic incentives to illegal work. The cost of labour is extremely high in Poland, regardless of the period of work involved. No legal category of seasonal worker exists in Poland. Thus, hiring a worker, be they a Polish national or a foreigner, for 2 or 3 months, entails the same tax and social security contributions as in the case of permanent employment, with no exemptions. The demand for a cheap and flexible labour force in some sectors of economy, especially agriculture and construction, is therefore met by foreigners who are interested in maximising their short-term profit and are also often thus not interested in legal work.

3.3 Protection against the exploitation of foreign workers

Due to the relative novelty of the phenomenon of employment of foreigners in Poland, and due to the very low numbers of legally employed foreigners, no special system for the protection of foreign workers' rights has been established. Instead, they are covered by the general protection offered to all workers in Poland by the Labour Code. The employment conditions and non-discrimination clauses cover all workers hired by Polish employers or posted to Poland by foreign EU or non-EU companies. If a worker claims his/her rights are violated, then he/she may turn to the trade unions, or to the National Labour Inspectorate, the primary state agency controlling labour rights. NLI inspectors can make inspections in companies, fine employers in case of minor shortcomings, or take the case to court in the event of more serious violations of the labour code. Additionally, Labour courts exist in Poland as a dedicated part of the general judicial system, specializing in matters of work relations and labour rights. In general, the system of protection of labour rights is well-developed, mostly due to the very generous system for the protection of working rights which was developed under the communist regime.

The protection of very basic labour rights, such as the right to payment, is theoretically also offered to foreigners who are illegally employed. Even if the foreigner has no right to work in the form of a work permit, the employer cannot violate his rights regarding, for example, payment (I1PL). If such a violation is uncovered by National Labour Inspectorate inspectors, the employer is obliged to make all the necessary payments to the employee. However, there are no data as to whether legally or illegally employed foreigners use this system to defend

their labour rights. Illegally employed foreigners always risk deportation, or a decision obliging them to leave the territory of Poland if they openly declare themselves and this probably constitutes an important factor prohibiting them from standing up for their labour rights. The lack of any opportunity to regularise a job after even a very short spell of time working illegally makes the law very tough, and, sometimes, means that it is operating contrary to public interest.

Illegally employed foreigners are the most vulnerable to all forms of exploitation. Occasional press reports⁵³ and qualitative studies among Ukrainian and Vietnamese migrants to Poland confirm the existence of various forms of exploitation of illegally employed foreigners (Frelak and Bieniecki 2007, Koryś and Kloc-Nowak 2006). Yet the scale of exploitation is as hard to estimate. The Ukrainians claim that, in their opinion, exploitation, in particular, the non-payment of wages, is a relatively scarce phenomenon (Frelak and Bieniecki 2007: 52). Among the Vietnamese, who are employed by their compatriots in the majority of cases, some forms of exploitation were revealed by the research; however, in only one case was an employer involved in the use of forced labour taken to court and sentenced. The researchers' experience demonstrated that the closed nature of this particular ethnic group makes it very hard to conduct research effectively, especially on such sensitive issues (Koryś et al. 2007: 45).

Human rights activists anticipate that the exploitation of foreigners may increase with the increase in inflow of foreign workers from Asian countries. They argue that different cultures, with different standards of labour rights, might facilitate what, in European terms, is held to be the exploitation of foreign workers by their foreign bosses (NGO1PL).

Special protection is offered to victims of trafficking. A programme, financed by the Ministry of the Interior and Administration and implemented by La Strada, includes psychological, medical and material support to victims of trafficking. A 2-month visa for a legal stay in Poland provides presumed victims with a period of reflection during which they may decide whether to cooperate with the police and the prosecution. Special coordinators in the police force and consultants in the public prosecutors' offices are involved in the programme, creating a relatively wide and well developed institutional infrastructure for identifying and helping the victims of trafficking. However, to date, only 12 victims in 2006 and 15 in 2007 took advantage of this programme. The programme represents the good practice of the National Referral Mechanism, a co-operative framework through which the state authorities fulfil their obligations to protect and promote the human rights of people who have been trafficked, co-ordinating their efforts in a strategic partnership with civil society (OSCE/ODIHR 2004). All the beneficiaries of the programme were involved in forced prostitution; there were no victims of forced labour of any other kind (G3PL). However, the

⁵³ Lewińska A., "Praca Ukraińców na czarno plagą w Polsce" [Black market Ukrainian workers plague Poland] *Gazeta Wyborcza* 27.04.2007; P. Pytlakowski, "Zysk z wyzysku" [Profit from abuse]. *Polityka* 16.12.2006.

programme's potential has yet to be fully realized, as, to date, too few victims have decided to cooperate (NGO2PL).

3.4 Punitive measures: the system of control and sanctions

The system of control and sanctions against illegal employment is relatively well developed in Poland. The system of sanctions cannot be regarded simply as a punitive measure, since it plays both a preventive and a protective role simultaneously, by discouraging employers from illegal hiring and discouraging foreigners from undertaking illegal employment.

The system was developed in the 1990s, along with the new challenges in the migratory situation of Poland. It was only in 1994 that the first institutions were granted the competences allowing them to verify the legality of foreigners' employment; at the same time, the two-track system of sanctions, including financial sanctions for employers and employees, was introduced. Following several institutional changes, two state agencies currently have the competence to control the legality of employment of foreigners; these are the National Labour Inspectorate and the Customs Service.

The National Labour Inspectorate (NLI) has only been an institution authorized to control the legality of the employment of foreigners since July 2007. Previously, the special divisions within the voivodship offices, known informally as 'the labour police', were responsible for controlling the legality of employment⁵⁴. The rationale for delegating these competences to the National Labour Inspectorate was to concentrate all control competencies in the labour rights field in one institution. However, one of the first legal problems to be solved in the near future involves the difficulties NLI inspectors encounter in carrying out inspections with regard to private individuals involved in illegal hiring. As described in Section 2, private households create a huge market for the illegal employment of foreigners in Poland. At the same time, according to the Act on the National Labour Inspectorate, employers and entrepreneurs, for whom physical persons, including the self-employed, carry out work⁵⁵, are subject to control by the National Labour Inspectorate. In a case where a private individual is suspected of illegal hiring, the NLI inspectors are obliged to turn first to the courts in order to confirm the existence of an employment relationship and only then can they carry out an inspection.

Another state organ able to control the legality of foreigners' employment is the Customs Service (CS). The Custom Service's primary aim is to exercise customs control, counteract custom fraud and fight smuggling. Its competence to control the legality of employment of

⁵⁴ Along with the institutional changes, staff transfers were carried out between the institutions, with the legality inspectors who, until recently, were employed in the voivodship offices, joining the staff of the NLI staff; article 107 of the Act on the National Labour Inspectorate of 13th April 2007 [Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy], *Dziennik Ustaw* 2007, No. 89, item 589.

⁵⁵ Article 13 of the Act on the National Labour Inspectorate of 13th April 2007 [Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy], *Dziennik Ustaw* 2007, No. 89, item 589.

foreigners results from practise, because, in tracing illegal goods, such as tobacco products on which duty has not been paid, they often encounter foreigners involved in illegal employment or trade activities by, for example, dealing in such goods at bazaars. Since 2003, Customs Service officers have had the authority to check the legality of employment and, since 2007, the scope of their authorities has been better defined and includes, for example, the right to carry out an inspection with regard to a private individual⁵⁶. This latter competency arose from years of occurrences, where CS officers came across foreigners involved in various economic activities, mostly trade, yet had difficulty in proving the existence of the employment relationship. Consequently, they are now able to carry out an inspection in regard to any person they encounter during the course of their duties.

Generally speaking, the level of sanctions imposed on employers involved in illegal hiring used to be rather low in Poland in comparison to EU levels. Recently, however, the fines were raised in order to correspond more closely to the levels of fines in other EU countries (I1PL). Currently, the minimum fine for employers caught in illegal hiring is PLN 3000, which is approximately EUR 833, a sum slightly more than three times the minimum monthly salary in Poland⁵⁷. This is rather a high fine in the case of employers hiring a single worker illegally for a very short time. On the other hand, in some situations, when many illegal employees have been working for a longer period of time, the same sanction definitely represents a sum which is lower than the profits the employer can expect to make as a result of the illegal hiring. Consequently, illegal hiring can be profitable, even in the case of its being discovered.

Apart from financial sanctions, provisions are also made for other administrative sanctions to be levied against employers involved in illegal hiring. An employer convicted of the illegal hiring of foreigners may not apply for a work permit for any foreigner for a period of one year, so is excluded from the legal hiring of foreigners during that time⁵⁸. However, in Poland, no black list exists that would, for example, entail the exclusion from tendering for public procurement contracts in the case of employers caught in the illegal hiring of foreigners⁵⁹.

From the outset, the financial sanctions to be imposed on employers have been accompanied by those to be imposed on illegally employed foreigners. The aim is to discourage foreigners from undertaking illegal work and thus render the system for preventing the inflow of foreign

⁵⁶ Amendments to the Act on the Customs Service were made in article 100 of the Act on the National Labour Inspectorate [Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy], *Dziennik Ustaw* 2007, No. 89, item 589.

⁵⁷ As of 1st January 2008, the minimum monthly payment is 1126 PLN.

⁵⁸ §4.1, point 4 and §4.3 point 3 of the Ordinance of the Minister of Labour and Social Policy on the procedure and conditions for issuing a work permit to a foreigner [Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 21 lipca 2006 r. w sprawie trybu i warunków wydawania zezwoleń na pracę cudzoziemca], *Dziennik Ustaw* 2006, No. 141, item 1002.

⁵⁹ The Act on the Law on public procurement of 29th January 2004 [Ustawa z dnia 29 stycznia 2004. Prawo o zamówieniach publicznych], *Dziennik Ustaw* 2006, No. 164, item 1163 (and as further amended).

labour more secure (I1PL)⁶⁰. Currently, a foreigner caught in illegal employment can be punished with a minimum fine of PLN 1000, approximately EUR 277. Moreover, his/her work permit, or the declaration that a work permit will be issued, is waived by the regional governmental representative, the Voivod⁶¹.

Additionally, an expulsion order or obligation to leave the territory of Poland is issued. Pursuant to the law, the decision on expulsion is issued if the foreigner has carried out work contrary to the Act of 20th April 2004 on the Promotion of Employment and Labour Market Institutions, or has undertaken any other economic activity in violation of the laws in force in Poland⁶². The decision on expulsion is issued by the Voivod, *ex officio*, or at the request of the competent authorities, including the Border Guard, the Custom Service and the Police. The decision on expulsion must specify the time limit within which the foreigner must leave Poland; however, this may not exceed 14 days. It may also specify the route and the place where the border crossing should be made and may also oblige the foreigner to stay in a designated place until the execution of the decision (article 90 of the Act on Aliens⁶³). The foreigner can be escorted to the border if he/she does not comply with the time limit for leaving the territory of Poland voluntarily⁶⁴. In general, the costs of expulsion are borne by the foreigner. However, if the expulsion order is issued in relation to illegal employment, it is the employer who should cover all the costs relating to the execution of the expulsion decision⁶⁵. In practise, it has only been possible to exact the costs of expulsion effectively from employers since July 2007, when appropriate tariffs were introduced (I2PL).

If the circumstances of the case indicate that the foreigner will leave Poland on a voluntary basis, an obligation to leave the territory of Poland may be issued instead of expulsion order⁶⁶. The foreigner is then obliged to leave Poland within 7 days. In order to issue such decision, there must be positive factors making it very probable that the foreigner will leave the country without being forcefully expelled (I2PL). The foreigner should have a passport, and the means to make the journey. An obligation to leave Poland may be issued by commanding

⁶⁰ It must be noted that Polish law also provides for the imposing of financial sanctions on Polish nationals, registered as unemployed and undertaking employment without notifying the local labour office, and on their employers – article 119, the Act on the Promotion of Employment and Labour Market Institutions [Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy], *Dziennik Ustaw* 2004, No. 99, item 1001. However, in a case of employment without a contract of employment, only the employer is punished and no sanctions are imposed on the employee.

⁶¹ Article 88 (12) of the Act of 20th April 2004 on the Promotion of Employment and Labour Market Institutions [Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy], *Dziennik Ustaw* 2004, No. 99, item 1001.

⁶² Article 88 (1) of the Act on Aliens of 13th June 2003 (and as further amended) [Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach]. *Dziennik Ustaw* 2006, 234 item 1694.

⁶³ The Act on Aliens of 13th June 2003 [Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach]. *Dziennik Ustaw* 2006, Nr 234, item 1694 (and as further amended).

⁶⁴ Article 95 of the Act on Aliens of 13th June 2003 [Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach]. *Dziennik Ustaw* 2006, Nr 234, item 1694 (and as further amended).

⁶⁵ Article 96 (4) of the Act on Aliens of 13th June 2003 [Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach]. *Dziennik Ustaw* 2006, Nr 234, item 1694 (and as further amended).

⁶⁶ Article 97 of the Act on Aliens of 13th June 2003 [Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach]. *Dziennik Ustaw* 2006, Nr 234, item 1694 (and as further amended).

officers of the police force or Border Guard⁶⁷. An expulsion decision is issued against foreigners who do not fulfil the obligation to leave Poland on a voluntary basis.

Data on foreigners who are issued with a decision on expulsion, or the obligation to leave the territory of Poland, are stored in the index of aliens whose residence in Poland is undesirable⁶⁸. Foreigners recorded in the index are banned from access to Poland⁶⁹. The names of foreigners issued with a decision on expulsion are placed in the index for 3 or 5 years, whereas foreigners issued with an obligation to leave the territory of Poland are registered there for only one year⁷⁰.

There are selected groups of foreigners who, by virtue of the law do not face the risk of expulsion:

- persons with a permit to settle (Article 88 (2) of the Act on Aliens)
- persons holding a long-term resident's EC resident permit (Article 88 (2), Act on Aliens)
- the spouse of a Polish national or of the foreigners specified under points a) and b) (Article 89 (1), Act on Aliens)
- persons applying for refugee status (Article 89(1), Act on Aliens)
- persons who may be granted a permit for a tolerated stay (Article 89 (1), Act on Aliens).

However, although if they caught in illegal employment, people applying for refugee status are not sanctioned with expulsion for the duration of asylum procedure, they do face other less formal consequences. The fact of having undertaken employment may be interpreted as an indication of having had economic, rather than humanitarian reasons for coming to Poland. In the end, illegal work can lead to a negative decision regarding status⁷¹.

To sum up, the control and inspection procedures, as well as the system of sanctions, are relatively well developed in Poland. Following years of institutional changes, all competence for control in the field of labour rights were concentrated in one institution, namely the National Labour Inspectorate. The fact that the same, even wider competences have also been placed in the hands of Custom Service officers does not necessarily mean the overlapping of control. In practice, the work carried out by these two institutions targets different sectors of illegal work in the main, with National Labour Inspectorate inspectors primarily controlling companies, factories and other work places, while the Custom Service officers mostly target

⁶⁷ Article 98 of the Act on Aliens of 13th June 2003 [Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach]. *Dziennik Ustaw* 2006, Nr 234, item 1694 (and as further amended).

⁶⁸ Article 128 of the Act on Aliens of 13th June 2003 [Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach]. *Dziennik Ustaw* 2006, Nr 234, item 1694 (and as further amended).

⁶⁹ Article 21 of the Act on Aliens of 13th June 2003 [Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach]. *Dziennik Ustaw* 2006, Nr 234, item 1694 (and as further amended).

⁷⁰ Article 128 of the Act on Aliens of 13th June 2003 [Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach]. *Dziennik Ustaw* 2006, Nr 234, item 1694 (and as further amended).

⁷¹ E-mail correspondence with an NGO lawyer involved in providing legal assistance to asylum-seekers.

the bazaars and their various forms of illegal economic activity. What remains beyond either institution's control is the household sector, despite formal Custom Service competence in that area.

The system of sanctions, targeting both employer and employee and entailing both financial and administrative sanctions should be judged as being rather severe. However, when judging its effectiveness, what is vital is to look not only at the formal sanctions themselves, but also at the system by which they are implemented (see Section 4.1).

The apparatus of control and sanction provided for the fight against human trafficking needs discussing separately. People involved in activities connected with human trafficking face criminal charges and imprisonment for no less than 3 years. Sanctions are also provided for other related, penalised crimes; imprisonment of up to 5 years for depriving another person of their freedom and up to 10 years if this was combined with great torment, while unlawful menace carries a prison sentence of up to 2 years and procurement entails a sentence of up to 10 years⁷².

As in the case of any crime, the law enforcement authorities, the police and the public prosecutors are the main state organs involved in combating human trafficking. Special coordinators and teams to combat this were established in every Police Headquarters at voivodship level. Their main aim is to ensure the implementation of the rules stipulated in the specific procedures laid down to be followed by law enforcement bodies in a case of human trafficking (“Algorytm postępowania funkcjonariuszy organów ścigania w przypadku ujawnienia przestępstwa handlu ludźmi”)⁷³. The teams also carry out reconnaissance and monitor places of potential risk. The team members participate in various training programmes and are involved in international police cooperation in the field. In addition to the voivodship teams and coordinators, in September 2006 the Central Team for Combating Trafficking (Zespół ds. Walki z Handlem Ludźmi) was established and based at the General Police Headquarters. This team coordinates and supervises the activities of the coordinators and teams in provincial police headquarters. Analogically to the structures within the police force, there are also special officers in the Border Guard, who are responsible for ensuring that the special procedure is implemented if a case of human trafficking case is uncovered.

To sum up, the state law enforcement bodies are involved in the fight against human trafficking in Poland and, in order to improve their performance, special organisational structures specializing in cases of human trafficking have been established.

⁷² Articles 253, 189, 190, 203 and 204 of the Polish Penal Code [Kodeks karny], *Dziennik Ustaw* 1997, No. 88, item 553.

⁷³ <http://www.policja.pl/portal.php?serwis=pol&dzial=303&id=5154&search=306117>

4 Policy evaluation: In search of best practices

The aim of this section is to examine policy implementation (4.1), in order to evaluate the efficiency of preventive, protective and punitive measures (4.2) with a view to identifying best practices (4.3).

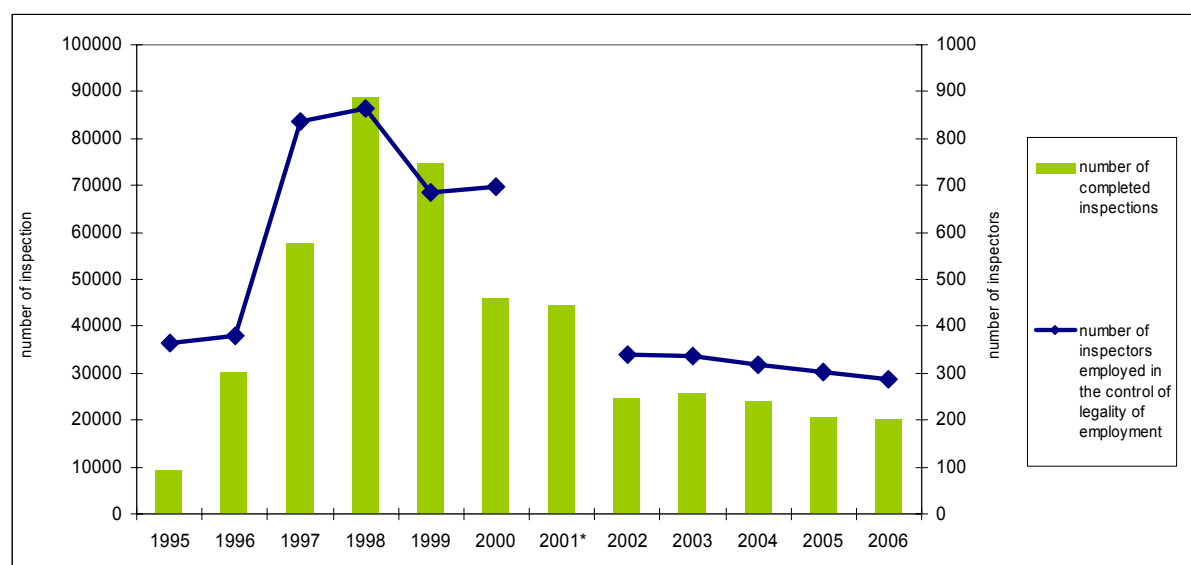
4.1 Policy implementation – how the system really works

Poland is a unitary country; national policy is therefore developed at government level and then implemented by various country-wide institutions, with little or no local variety in terms of policy design or regulations. Thus, in principle, the implementation of policy in the field under analysis in this report should not display local diversification.

As access to Polish territory has, in general, been relatively easy and it has been possible for many migrants willing to work to enter and stay legally on tourist visas, the key element in the fight against the illegal employment of foreigners has always been control of the workplaces. It is only by frequent and effective inspections that illegal workers can be detected and the readiness of employers to employ illegally be diminished. However, the system for controlling the legality of employment has undergone repeated reorganization, which seems to have had a negative impact on its efficiency. In 1999, the inspectors involved in the field were transferred from the voivodship labour offices to the district (*powiat*) authorities, which dispersed the human and financial resources and reduced the number of cases of illegal foreign workers being uncovered (Okólski 2000: 22). Between 2001 and 2002, the services were transferred back to the regional level, which required the investment of a great deal of time and effort in initial reorganisation and training and led to a further reduction in the number of inspections conducted that year (Zawadzka and Zarański 2003: 205). The services have not increased the number of inspections; on the contrary, their number has been decreasing (Figure 2).

The inspections are unevenly distributed between the regions; in 2006, their number varied from 298 in Opolskie to 2294 in Mazowieckie (Table 5). The variation is even greater as regards the number of recognized cases of illegal employment of foreigners; while in Lubelskie there were 765 such cases, the highest number of incidents in the country, in Lubuskie there were none, despite a large number of inspections. Podkarpackie, a voivodship neighbouring on Lubelskie had only 14 recognized cases, one of the lowest incident rates in Poland. Given that the two regions are located on the Eastern border, such a difference in scale is rather improbable. However, with a similar number of inspectors, Lubelskie completed almost two times as many inspections as Podkarpackie. This comparison shows how the density and effectiveness of control operations differ between regions.

Figure 2: Legality of employment inspections in Poland, 1995–2006



Remarks: In 2001, as a result of reorganization, no data on staffing was collected

Source: Ministry of Labour and Social Policy (2007: 7, 37)

Table 5: Effectiveness of legality of employment inspections in Poland, 2006

Region (<i>województwo</i>)	Number of completed inspections	Number of inspectors	Number of completed inspections per 1 inspector	Employers recognized as employing illegally	Recognized cases of illegally employed foreigners
Dolnośląskie	1855	29	64	565	49
Kujawsko-Pomorskie	902	17	53	228	17
Lubelskie	1936	24	81	964	765
Lubuskie	1434	14	102	124	0
Łódzkie	1195	24	50	260	48
Małopolskie	747	16	47	136	53
Mazowieckie	2294	27	85	494	281
Opolskie	298	9	33	87	4
Podkarpackie	1081	22	49	245	14
Podlaskie	929	9	103	197	304
Pomorskie	1539	13	118	120	10
Śląskie	1312	20	66	237	19
Świętokrzyskie	1030	11	94	350	29
Warmińsko-Mazurskie	751	11	68	355	35
Wielkopolskie	1746	26	67	327	40
Zachodniopomorskie	1025	16	64	320	50
Poland – Total	20074	288	70	5009	1718

Source: Ministry of Labour and Social Policy (2007: 10, 15, 26).

Due to the transfer of the control of the legality of employment from the voivodship administration to the National Labour Inspectorate and its regional structures, 2007 was an atypical year with regard to inspections of the legality of foreigners' employment. The National Labour Inspectorate planned to achieve the previous year's ratio of 10 thousand inspections in six months. Despite this, it was late autumn before they were able to launch operations (I1PL); employment of foreigners, however, is usually most frequent in the summer, during the harvest.

Within the structure of the control system, the principal institution, the National Labour Inspectorate, has a long tradition of monitoring issues relating to labour conditions and workers' rights. The Inspectorate has a specific inspection methodology in order to guarantee the quality and consistency of the procedure throughout the country; it also possesses experience with regard to such key areas as the gaining of knowledge in advance, in order not to conduct inspections randomly, and cooperation with other institutions (I1PL). It is perceived as an institution well qualified and equipped to control both labour conditions and the legality of employment (G3PL). In most cases, its inspectors deal with unsafe working conditions, or the illegal employment of Polish nationals, mainly involving people working without an employment contract. Special focus is also placed on cases where registered unemployed people fail to fulfil the obligation to notify the state labour offices of having undertaken employment.

National Labour Inspectorate inspections are subject to special procedures that guarantee the quality and consistency of control measures throughout the country. In particular, the inspectors' competences during an inspection are specified in detail. They include free and full access to any and every premises occupied by the company under inspection, the right to interrogate all or any of the people concerned, which includes the right to conduct an ID check⁷⁴, and so forth. Although the procedure allows employers to be given advance notification of the inspection, this is never done in the case of employment legality inspections, as such notification would render the control useless (I1PL). If irregularities in the legality of employment are uncovered, the inspector takes the case to court, and, in the case of foreigners, informs the police or the Border Guard if residence regulations have also been violated⁷⁵.

In the previous section, mention was made of the fact that one of the key features of the control of the legality of employment in Poland is the cooperation between institutions with complementary competences. This cooperation is not limited to the exchange of information, but usually takes the form of joint inspections. The principal factor leading to this practice is the fact that neither the National Labour Inspectorate nor the Customs Service have been

⁷⁴ Articles 23–26 of the Act on the National Labour Inspectorate of 13th April 2007 (Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy), *Dziennik Ustaw* 2007, No. 89, item 589.

⁷⁵ Article 37 of the Act on the National Labour Inspectorate of 13th April 2007 (Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy), *Dziennik Ustaw* 2007, No. 89, item 589.

granted the competence to apprehend a person revealed as an illegal worker. There are also security reasons behind the practice of cooperation; police and Border Guard officers, eligible to carry a weapon, protect the National Labour Inspectorate inspectors or Custom Service officers against possible assault or other aggressive behaviour on the part of the people under inspection (I3PL, I1PL). In 2007, having been granted competences in the field of employment legality, the National Labour Inspectorate then had to establish agreements with the Border Guards and the Customs Service; these agreements are discussed in detail below. At the same time, the Inspectorate had to modify its mode of cooperation with the Social Insurance Institution (ZUS – *Zakład Ubezpieczeń Społecznych*) and the fiscal authorities (*Urząd Skarbowy*) in order to include the illegal work being carried out by foreigners. However, the social security and fiscal authorities do not participate in joint inspections.

In practice, although it is authorised to control legality in the employment of foreigners and in their economic activities, the Customs Service, does not perform independent inspections. The most important obstacle is the fact the Customs Service has no authority to apprehend people recognized as violating the law; for this reason, the Service needs to cooperate with the police or the Border Guard. The necessity of coordinating activities with a partner institution is sometimes a problem; staff of the Customs Service themselves point out that they often receive denunciations and undertake unscheduled inspections in response. Although it is only officers of the Custom Service who have the power to conduct an inspection of private individuals employing foreigners illegally, this competence is not exercised in practice. The institution's resources are too limited, especially in terms of staff, to carry out inspections of private households on a large scale (I3PL). Although the Customs Service has the formal competence to control the domestic services sector, it seems to have little interest in entering this field and only exercises control over work and economic activity related to illegal goods and trade, the Service's main object of interest.

The Border Guard have so far only played an indirect role in controlling the legality of foreigners' employment. This institution also acts on the basis of planned operations and thus joint inspections are scheduled in conjunction with the Customs Service; since July 2007, they have also been set up jointly with the National Labour Inspectorate. Control by intervention is also carried out, in which case the partner institution responsible for illegal employment is informed and might launch their procedure on the basis of the documentation with which they have been provided. The representative of the Border Guard interviewed as part of this research found the joint inspections to be positive, in general terms, but "time consuming and too complicated". The most "natural" partner for the Border Guard is the Customs Service, as "they work together on the border" (I2PL). The Border Guard, as an institution, finds itself capable of controlling the legality of employment independently and is working on gaining the power to do so. However, the representative of the Ministry of the Interior and Administration interviewed for the purposes of the study considers joint controls to guarantee better quality, as each institution is specialised and trained in a well defined domain, such as

the legality of a person's stay, the legality of employment, working conditions and so forth (G3PL).

Another institution involved in carrying out inspections related to the legality of employment of foreigners is the police force. This institution is perceived by the National Labour Inspectorate as being of great assistance, primarily because police officers provide protection for inspectors. Police officers are also useful in facilitating the conducting of an inspection, as employers might not expect an inspection of employment legality when contacted by the police (I1PL).

The National Labour Inspectorate, the Border Guard and the Customs Service undertake inspections on the basis of annual plans, or as an intervention after receiving a complaint or denunciation. The National Labour Inspectorate prepares their annual inspection plans according to previously selected criteria, issues and sectors. In 2007, illegality issues were not included in its plan; however, they do form a part of the plan for 2008 (I1PL). The plans are not made public in advance; their purpose is to allow the institutions involved to coordinate their activities and allocate their staff appropriately. In the case of scheduled joint inspections, each institution is responsible for a different aspect. First, border guards or police officers verify whether or not the foreigners concerned have valid documents and, if required, visas. The labour inspectors then verify the documents concerning the foreigners' employment. Meanwhile, in a case where the inspection involves goods, for example, in a market, the customs service officers investigate whether or not those goods have been subject to the proper taxation. If the foreigners are found to have violated the law, they are apprehended by either the police or the Border Guard.

The procedure is more complicated in the case of unplanned interventions. According to the Border Guard officer interviewed, the Border Guard sometimes operates alone and, if they suspect the existence of illegal employment, this is documented and then sent to the National Labour Inspectorate, where steps are taken to verify it (I2PL). Not waiting for the intervention of the National Labour Inspectorate might lead to situations where an accusation of illegal employment is made by Border Guard, in other words, by an institution without competence in the area of controlling the legality of work.

The system of sanctions for illegal employment, as described in detail in section 3.4, involves the imposition of financial sanctions on both parties and the expulsion of the foreigner or the issuing of a decision obliging them to leave the territory of Poland. In practice, the implementation of these sanctions involves certain problems.

Although the National Labour Inspectorate inspectors can impose fines, in practice they cannot impose them on employers who have engaged in illegal employment. The maximum

possible fine which National Labour Inspectorate inspectors may impose is PLN 2000⁷⁶; however, the minimum fine for the illegal hiring of a foreigner is PLN 3000. Thus, in this area, the inspectors cannot directly punish the employers with fines, but have to take the case to court, taking on the role of public prosecutors⁷⁷. This prolongs the procedure and increases administrative costs. In addition, the National Labour Inspectorate maintains that the courts often impose fines which are too low (I1PL). It is highly likely that the system would be more effective if the National Labour Inspectorate inspectors could directly punish the employers with the imposition of fines, without the necessity of taking the case to court and changes along these lines are planned (I1PL).

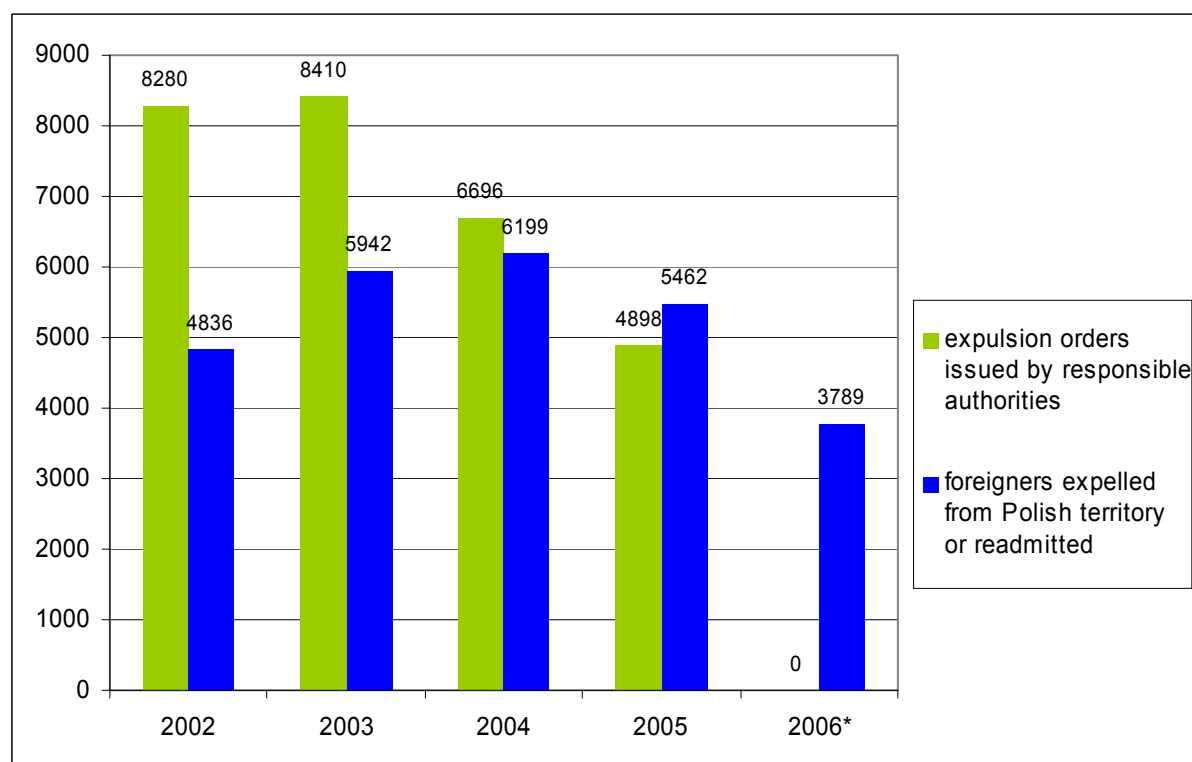
Illegally employed foreigners who have been identified by the authorities and issued with an expulsion order are held in special detention centres. Currently, when the time comes for the order to be executed, they are escorted to the border by the police and then, from the international seaport or airport, the Border Guard escorts them to their country if necessary; however, the Border Guard plans to obtain the power to be responsible for the entire procedure (I2PL). Nevertheless, in many cases, the expulsion order cannot be executed. One of the conditions that must be fulfilled is the positive establishment of personal identity. In practice, apprehended foreigners often have no identification documents and the sending states do not always confirm the identity of their apprehended citizens.

In the opinion of the Border Guards officer, it is possible that they are reluctant to cooperate with the authorities of receiving countries due to the profits incurred from remittances sent from abroad by their citizens (I2PL). When such a procedure lasts for more than a year, the Border Guard regularizes the person's status and applies for the foreigner to be granted tolerated stay status. Paradoxically, once they possess this status, the foreigner can work in Poland without a work permit. Nonetheless, if the Border Guard manages to determine the person's identity, this status may be cancelled and the expulsion order executed (I2PL). Although when a foreigner who has received an expulsion order leaves the territory of Poland this is registered at the border, the efficiency with which the sanctions are implemented is not recorded in terms of particular causes, such as illegal work; therefore, only general data on foreigners expelled from Poland or readmitted are available (Figure 3).

⁷⁶ The maximum amount for all types of fines in Poland; the Misdemeanours Procedural Code of 24th August 2001 (Kodeks postępowania w sprawach o wykroczenia z dnia 24 sierpnia 2001), *Dziennik Ustaw* 2001, No. 106, item 1148.

⁷⁷ Article 17 (1), the Misdemeanours Procedural Code of 24th August 2001 (Kodeks postępowania w sprawach o wykroczenia z dnia 24 sierpnia 2001), *Dziennik Ustaw* 2001, No. 106, item 1148.

Figure 3: Expulsion orders from Poland and their implementation, 2002–2006



* No data on expulsion orders issued in 2006 have been published.

Sources: expulsion orders: the Office for Aliens <http://www.udsc.gov.pl/Yearly,276.html>; foreigners expelled or readmitted: data held by the Border Guard. <http://www.strazgraniczna.pl/statys> (17.04.2008)

In general, the regulations on the illegal employment of foreigners is not very strictly implemented. Reasons for this include inadequate financial resources and staff, an issue which was emphasised in particular by the Custom Service (I3PL). However, perceptions of the phenomenon also play an important role. The illegal employment of foreigners is not seen as a major threat by the state authorities, as is witnessed by the fact that no respondent mentioned this issue. The high level of social acceptance of both illegal employment in general, and of foreigners in particular, produces a correspondingly low level of denunciation of illegal workers and does not improve the capabilities of the controlling authorities. With the exception of the La Strada Foundation and its activities targeted at human trafficking, the absence of a civil society organization focused on the rights of foreign workers demonstrates the fact that the third sector is not involved in the issue. The detection of illegal employment would be advantageous for both legal employers and their employees. However, although their representatives are critical of the efficiency of the inspections (E1PL, TU1PL), no mention was made in either the interviews or the media being monitored of pressure to intensify controls being brought to bear by trade unions or those employers who bear the costs of the legal employment of foreigners.

The fight against human trafficking requires an especially sensitive attitude on the part of the authorities. The staff of the institutions involved must be able to recognize a victim of

trafficking and then to employ specially designed protective procedures. This is difficult in practice as, in the opinion of the La Strada Foundation expert, these authorities are, in general, distrustful of foreigners and thus, perceiving somebody as a victim requires a change in this routine attitude (NGO2PL).

In the past, assisted by the La Strada Foundation, the Ministry of the Interior and Administration has trained the Border Guard and the staff of the 'labour police' in issues related to human trafficking. According to the La Strada expert, during such training sessions, the staff involved in the control of employment legality admitted that they had encountered cases of human trafficking but, being unaware of the phenomena, had treated the victims as illegal workers. In the opinion of both the Ministry of the Interior and Administration and La Strada, Border Guard officers are the best trained in these issues (G3PL, NGO2PL). However, the newly responsible institution, the National Labour Inspectorate, has not yet been trained to identify forced labour and slavery⁷⁸. Thus, rather than offering protection, there is a greater likelihood of their penalizing such a person as an illegal worker and informing other authorities in a case of illegal residence.

The La Strada Foundation reports several problems with the successful implementation of their operations targeted at the victims of trafficking. First of all, the interest of victims in cooperating with the law enforcement authorities is relatively low⁷⁹ and thus the resources available to them are not fully employed. The same is true of the foundation's special phone line, operated by Vietnamese native speakers; to date, no victim of trafficking or forced prostitution has called (NGO2PL). According to the La Strada expert, there is a set of psychological problems which makes the victims of trafficking and forced labour reluctant to seek help. They fear being punished, especially if they have crossed the border illegally. Based on their experiences in their own countries, they distrust the police and NGOs. If there is a group of victims, each one is afraid that the others will fail to testify; if this does happen, the case may be more easily dismissed and the person who did testify is at great risk from the persecutor.

The situation with regard to the abuse of rights and the exploitation of illegally employed foreigners is so complex that the victims are often unable to define their situation properly. People who have gone work abroad are usually ashamed to return home with nothing, so once they find themselves in an abusive relationship with the employer, they accept it for a long time, counting on receiving their pay, or at least some of it. On the other hand, if they have been employed illegally, their chances of effectively claiming their rights are limited. They have no wish to testify against the intermediaries who offered them the work, as they will not receive another offer if they make trouble. They are afraid, because the chances of the person

⁷⁸ In principle, the staff was transferred to the NLI from the 'labour police', where training had been given. Nevertheless, the NLI's structures and procedures will have to be adjusted and sensitized to human trafficking issues.

⁷⁹ According to MIA data, in 2006, 10 people made use of the assistance offered by La Strada and in 2007, only 3 people did so. Source: <http://www.mswia.gov.pl/porta1/pl/391/2001/> (accessed 17 April 2008).

who organized the forced labour being sentenced are low and there is the risk that they will take their revenge on the denunciator (NGO2PL). All of these factors, together with unclear legal definitions and difficulties in proving a case in court, resulted in the low rates of detection and punishment with regard to the employers exploiting foreign workers in areas other than the sex trade⁸⁰.

4.2 Policy outcomes: identification and evaluation

The analysis of the legal regulations presented in Sections 3.2, 3.3, and 3.4, as well as the overview of the practical implementation of the regulations given in Section 4.1, allow for the actual results of the policy to be assessed. The identification of policy outcomes and the evaluation of Polish policy on the illegal employment of foreigners presented below are based on the results of the research conducted for this study. Unfortunately, no social research exists that would allow for more a data-based policy assessment and provide reliable indicators of policy success in support of our conclusions and reflections.

As outlined in the preceding sections, the policy for combating the illegal employment of foreigners has not lead to the creation of an effective system for the prevention of the phenomenon; neither has it led to the establishment of an effective system of control and sanctions. Instead, the system that has evolved during the last two decades is marked by a silent tolerance on the part of the authorities towards the illegal employment of foreigners in many areas (Kicinger 2005). Consequently, the policy to combat the phenomenon might best be described as ambivalent. On one hand, the system of prevention, control and sanction was introduced, while, on the other hand, the inefficiencies in the implementation of the policy have led to a significant gap between the official policy goals and the actual results. Primarily, the inefficiencies encompass the complicated, scattered and overlapping competences of the many state institutions involved, as well as an insufficient allocation of resources for the implementation itself, resulting in understaffed institutions and a low inspection rate.

When evaluating the policy, however, the measures which facilitate the achievement of stated policy goals should be identified. These are the policy measures that are either successful, or allow a prediction that, from the perspective of the policy goals, the changes brought about by a given measure will be beneficial and effective. One such measure which might thus be mentioned is the transfer of control competences and staff from special units in the voivodship offices to the National Labour Inspectorate. The unification of control competences relating to compliance with the legal framework for lawful employment and occupational safety and health within the National Labour Inspectorate should lead to less costly and more effective inspections, since, for example, cases of illegal employment may be revealed during a work safety inspection being conducted by the National Labour Inspectorate. In addition, after training, more staff should be capable of conducting

⁸⁰ To date, in Poland there has only been one sentence passed under art. 253 of the Penal Code in a case other than sexual exploitation; cf. section 2.2.

inspections of employment legality, as this will then include both previous and new National Labour Inspectorate inspectors.

Effective collaboration with NGOs in the field of human trafficking is also worth identifying as an example of positive policy action. Delegating the provision of psychological and social assistance for exploited workers and other victims of trafficking to NGOs has proved to be effective, given the traumatic situation of victims of human trafficking. Last but not least, the simplification of procedures for the hiring of seasonal workers should be considered as a step in the right direction as regards the creation of channels for legal hiring.

There are also examples of unsuccessful, ineffective policy measures that either undermine the system, or fail to contribute to its effectiveness and efficiency. Among these, problems with the legislation itself should be emphasised, as they create a barrier to the effective creation and implementation of policy. The evident gaps highlighted in this study encompass, for example, the lack of regulation with regard to the status of the ‘labour police’ in the Mazowieckie voivodeship after the transfer of control competences to the National Labour Inspectorate, the lack of a precise definition of human trafficking and the lack of authority for the National Labour Inspectorate to conduct inspections involving private individuals. All these, and other gaps in the legislation, hamper the effectiveness and reliability of state operations in the field under study.

Furthermore, regularization operations should be included as examples of ineffective policy action. The two one-off regularizations carried out in Poland did not succeed in decreasing the scale of illegal stays and work to any considerable extent. This occurred mainly as a result of the fact that, in practice, the very strict regularization criteria meant that the largest groups of illegal workers in Poland were excluded from the possibility of regularization.

Policy effectiveness may also be affected by the tensions between the Ministry of the Interior and Administration, responsible for residence related issues and the Ministry of Labour and Social Policy, responsible for employment-related issues with regard to foreigners in Poland. The Ministry of the Interior and Administration’s natural focus on security, which leads to persisting on a cautious policy of admission often works in direct contradiction to the Ministry of Labour and Social Policy’s focus on labour market needs. Given the conflict of interests arising from these different areas of competence, the challenge of creating an effective system for controlling the legality of foreigners’ stays and employment of foreigners is even greater.

Most of the non-government policy stakeholders view the state policy as unsatisfactory. From the perspective of human rights and NGOs, the policy on labour immigration to Poland is criticized, first of all, as being as too complicated and overprotective. The tightness of the system of legal hiring is held to be responsible for the development of illegal work carried out by foreigners in the country. Obviously, the NGOs advocate that it is better to create

incentives for legal hiring, via a more open and simpler system of admission, rather than to attempt to master the system of control and sanction. The pro-integrative role of employment is cited as the most important factor in this regard. Thus, according to NGOs, having a job should constitute a basis for regularization (NGO1PL).

The partners in the social dialogue are also dissatisfied with government policy on legal hiring and with the ineffective efforts to combat the illegal employment. Both trade union and employer representatives agree on their criticism of government, although, obviously, from the perspective of various standpoints. While the trade unions are reluctant to accept recent government efforts to open the channels of legal seasonal immigration, the employers are definite in judging it insufficient, given their needs. However, they are unanimous in agreeing that the rate of inspections and, consequently, the probability of being caught, are both so low that employers feel safe and do not fear sanctions (TU1PL, E1PL).

The criticism of government and policy is often combined with comparisons to foreign solutions perceived as effective and thus worth implementing in Poland. In the construction sector, the employers' organisations emphasise that the system of employing migrants must become simpler, with lower fees, established procedures for the recognition of qualifications and, most importantly, they must allow the employer to hire a foreign worker for the entire period of a construction cycle (E1PL). The German system for the employment of foreign construction workers was mentioned by the interviewee (E1PL, see also *Wywiad z... Markiem Frydrychem* 2007) as the model of an effective system which is both employer- and employee-friendly. Transparent processes for the recognition of qualifications, low fees and a simple electronic registration system were presented as desirable innovations for Poland.

The agricultural employers' representatives (E2PL) also call for the simplification of the system of recruitment and a reduction in the bureaucracy involved. They pointed out that recruitment should not be based on sending invitations to unknown persons while they are still abroad. The Hungarian system for the simplified registration of temporary workers is mentioned as being effective and as limiting the bureaucracy involved (E2PL). They advocate simple forms for the local registration of foreigners who arrive with the intention of undertaking seasonal employment in agriculture as this would, in their opinion, constitute a real opportunity of employing such workers legally.

4.3 Best practices in combating the illegal employment of foreigners in Poland

The aim of this section is to enumerate best practices; in other words, the policy measures used in Poland in the policy field under study that would be successful, innovative and worth recommending to other countries. Few of the measures used in Poland with a view to combating the illegal employment of foreigners meet the criteria of best practice. The ineffectiveness of the system of control and sanctions means that even the best legal

regulations are failing to work. However, some of the solutions which have been developed are worth recommending⁸¹.

Among these solutions, the granting of access to the labour market without a work permit to some categories of foreigners who have been earlier pushed into an illegal employment situation must be mentioned. These categories include, for example, the spouses of Polish nationals or persons holding a permit for tolerated residence. The changes in the law should undoubtedly be acknowledged as the success of human rights lobbying by the Helsinki Foundation for Human Rights (NGO1PL). In practice, these solutions have enabled certain groups to enter the labour market without recourse to illegal employment as a result of the fact that their stay in Poland was legalised and, to great extent, guaranteed by the state. The rationale behind such changes is straightforward; if the state accepts a person's presence on its territory, it would appear to be natural that such a person should be allowed to cater for his/her economic needs by entering the labour market. Participation in the official labour market should therefore be treated as a pro-integration factor. Opening access to the legal labour market for those who have a right to be present on the territory seems to be a good method for dealing with illegality among these particular groups of foreigners.

Another good practice operating in support of government measures involves the activities of employers' organisations in disseminating the legal regulations on the employment of foreigners (E1PL, E2PL). This is very important when there is a change to the regulations, or when there is a lack of clarity regarding their implementation. Employers' organisations have focused on helping their members to publish information dealing with the changes and answering members' questions. In this way they mediate between government and policy on the one side and society on the other. This practice, undertaken voluntarily by the employers' organisations, is a guiding model, worthy of spreading and deserving of support from government, for whom such an information channel is a benefit.

Another example of good practice can be found in the government's engagement in combating human trafficking. There is a special programme for the protection of victims of trafficking, which grants the right to residence for a period for reflection, during which the victim can make a decision regarding cooperation with the police. Beneficiaries of the programme are given access to social assistance. If they refuse to cooperate they have to leave Polish territory; however, they are not listed as aliens whose residence in Poland is undesirable, as always happens in cases of expulsion or decisions obligating a person to leave Polish territory. What is important is that the programme for the protection of victims of trafficking is implemented not by the public social assistance services, but by a specialised NGO, chosen via the process of open competition. Such a solution has many advantages. First

⁸¹ As no research exists in Poland on the effectiveness of given policy measures, it is not possible to support the conclusions of this section with data containing, for example, the indicators of success of a given policy or policy action. Thus the best practices enlisted here have been selected on the basis of the results of the research conducted for this study, and represent the views of the authors.

of all, it is more comfortable for the victims, for whom seeking assistance from an NGO may be easier than turning to the state authorities, with whom they could have had a negative experience in the past and in their countries of origin. Also worth underlining is the fact that the programme's efficient functioning strengthens the still underdeveloped cooperation between government and the NGOs in the field of migration policy and it helps to convince the administration that NGOs can implement state-delegated activities fruitfully and efficiently.

The information campaigns, mainly undertaken by NGOs, also represent good practice in the field of preventing and combating human trafficking. These campaigns, described in detail in section 3.2, appear to have been successful in disseminating knowledge among the public about human trafficking. In addition, information leaflets targeted directly at possible victims are distributed in the places where they might have access to them, such as Polish consulates abroad, border crossings and the Ukrainian consulate in Poland (NGO2PL). Although we cannot estimate the real efficiency of the leaflets, as we have no knowledge regarding how many women have, as a result of reading them, avoided dangerous situations which could have made them victims of trafficking; still it may be said that the potential benefits of such information campaigns are considerable.

Also worth noting are the training programmes for those state officers who may encounter cases of human trafficking while performing their duties. In Poland such courses are aimed at the officers of the Border Guard and their organisation was delegated to the NGOs. Interestingly, the NGO representatives, who usually hold themselves at a distance from the Border Guard officials, confirm the efficiency of such training. For example, they point out that the BG officers who had been trained in such issues have proved their usefulness in recognising a possible victim of forced labour at the moment when she was aiming to return to her country of origin, Ukraine, after an illegally prolonged stay in Poland (NGO2PL).

Last but not least, Poland's efforts to prevent the illegal employment of Poles abroad must be noted as best practice. It is worth underlining that any measures undertaken by the state with the objective of discouraging its citizens from taking part in irregular labour migration or of hindering their participation in such illegal practices, is important from the European point of view, as they contribute to reducing the illegal employment of foreigners in Europe as a whole.

Various measures have been adopted in Poland with the objective of discouraging Poles from undertaking illegal employment abroad. First, there are government efforts to enable its citizens to undertake legal work. These include bilateral agreements with various European countries and established opportunities for Poles to work in Europe, and especially in Germany, mainly on a seasonal basis (Kicinger 2005). The Polish government's lobbying to open EU labour markets after accession to the EU accession was carried out with the same aim.

In addition, there is a licensing system for employment agencies and labour intermediation in Poland. According to Polish law⁸², all agencies dealing with labour intermediation, both within the country and abroad, are treated as labour market institutions. Before it can start to operate, an agency is obliged to obtain a certificate and confirmation of its registration in the given voivodship. In order to register and obtain such a certificate, the entrepreneur has to prove that he pays taxes and social contributions regularly, has not been sentenced under the law and has the office space, equipment and qualified staff necessary for running the agency. Local authorities at the voivodship level are empowered to grant these certificates and they run a register of certified employment agencies⁸³. The law provides financial sanctions, in the form of a fine of no less than PLN 3000, for running an agency without a valid registration and for obtaining fees from people seeking employment⁸⁴. This system regulates the labour market and lessens the chances of agencies participating in providing workers for illegal employment abroad, although the act does not stipulate sanctions specifically for such activity.

Finally, various forms of information campaigns undertaken mainly by the government and presenting the conditions of employment abroad are another measure aimed at discouraging people from undertaking illegal employment. From the point of view of providing society with widely accessible and reliable information, a very important period in Poland was that following accession to the EU. The limitation of free access to the labour market for the citizens of the new member states resulted in complicated and varying legal conditions for undertaking employment in the old member states. In response to the new legal regulations, several information campaigns based on the notion of “know before you go” were launched. The first was the campaign run by the British government and organised by IOM in cooperation with the Ministry of Labour and Social Policy. The campaign gave information regarding new British employment regulations affecting the citizens of the new member states and, especially, regarding the newly introduced Workers Registration Scheme.

⁸² The Act on the Promotion of Employment and Labour Market Institutions of 20th April 2004 [Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy], *Dziennik Ustaw* 2004, No. 99, item 1001.

⁸³ Articles 18 and 8.1(17) of the Act on the Promotion of Employment and Labour Market Institutions of 20th April 2004 [Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy], *Dziennik Ustaw* 2004, No. 99, item 1001.

⁸⁴ Article 121 of the Act on the Promotion of Employment and Labour Market Institutions of 20th April 2004 [Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy], *Dziennik Ustaw* 2004, No. 99, item 1001.

5 Conclusions and recommendations

This study, devoted to Polish policy regarding the illegal employment of foreigners, is the first in Poland to encompass both an analysis of illegal work carried out by foreigners and of the measures taken to prevent and control this phenomenon.

As the authors have highlighted in the report, Poland, a country with a fairly low level of immigration, is, at the same time, a country where the illegal employment of foreigners is relatively widespread in several sectors of economy. Although in response to the phenomenon, the Polish state has developed mechanisms for control and sanctions, in practice these are not efficient enough to limit illegal employment. The low likelihood of inspection translates into low risk for employers illegally employing native workers and foreigners. This, coupled with the still complicated and costly procedures necessary for the legal employment of foreigners, and enhanced by the short-term economic gains from undeclared work for employers and employees alike, prompts many entrepreneurs to employ illegally; the phenomenon also concerns private individuals employing foreigners in their households.

The analysis of the phenomenon presented in the report, together with state policy towards it and the implementation of the policy, allow a set of recommendations for future policy towards labour immigration to Poland to be formulated. These recommendations focus on preventing and combating the illegal employment of foreigners and on the protection of their rights.

Among the postulates of a general nature, the need to create more effective mechanisms to monitor the trends on the Polish labour market should be mentioned first. If migration is to be a response to the needs of the labour market, the access to up to date and reliable information regarding the present situation on the national and local markets is crucial. Such monitoring should, in particular, cover regional and local supply and demand for work, the including various skills expected and available. Also of great importance is that the information be complemented by forecasts on future trends, which could serve the long-term planning of migration policy in the labour migration field. At present, the contradictory visions of the situation held, on the one hand, by the trade unions, who point to the continuing high numbers of registered unemployed and, on the other, by the employers, who report real problems with staff recruitment, hinder the government's ability to take decisions on a scale of labour immigration that would be based on social consensus. Only the reliable monitoring of the labour market will allow for both knowledge-based decision making on the part of the government and the observation of the effects of immigration on the labour market.

The creation of channels for legal labour immigration, which would provide a real alternative to illegal employment, should also act as an incentive for the legal employment of foreigners. This should be combined with either the further streamlining of the work permit administrative system, or with the creation of supplementary, non-work-permit channels for

legal labour immigration. The latter is the direction in which the changes observed so far are moving.

If the goal of the state is limiting illegal employment, it is crucial not only to sanction and punish the people involved in the illegal practices, but also to guarantee some possibility for the people involved to legalize the situation. Therefore another important postulate for state policy concerning the employment of foreigners is the introduction of a legal means of regularization for people who have been working illegally but want to leave the shadow economy and undertake employment or economic activity legally. Work or entrepreneurship can be treated as a source of profit for the state and, at the same time, as a premise of the integration of the foreigners in Poland. Of course, such a possibility should be used with caution, in order to avoid potential immigrants treating the regularization possibility as a pulling factor.

Among the recommendations concerning the employment of foreigners in Poland, the necessity of strengthening the system for the protection of the rights of foreign workers, employed both legally and illegally, should be noted. In this sphere, it is worth focusing on the postulate, based on the German experience, which has been put forward by the NGOs (NGO2PL). This proposes the opening of a centre or, ideally, a network of centres providing legal information and counselling for foreigners. The centres would be open to all, regardless of their residence and/or work status. Such a centre would not require prior identification of the nature of the foreigners' problems when turned to for help. The centres could serve people who, for various reasons, and often unintentionally, have become illegal in terms of their residence and/or work status, as well as potential victims of trafficking, including forced labour.

In combating illegal employment, it is also important to make the services responsible for control more efficient. The practical division of responsibilities between the two main institutions, the National Labour Inspectorate and the Customs Service, is certainly good practice; however, such sectors as domestic service and agriculture, where the National Labour Inspectorate inspectors rarely intervene, remain outside the scope of the NLI inspectors. It would therefore be worth examining the possibility of granting independent control competences to the Border Guard. While checking the legality of foreigners' residence, this institution often encounters their illegal employment in various forms. This is especially frequent in the agricultural sector, which is neglected by the National Labour Inspectorate and the Customs Service. The possibility of independent Border Guard action in such cases would save the time and effort of inspectors from the other institutions. A coordination of regulations that would allow National Labour Inspectorate inspectors to issue fines to employers involved in illegal hiring would also lead to the simplification of procedures and, hopefully, to more effective controls.

However, in the opinion of the authors, the most important recommendation for future policy is the postulate of a sector-based approach to the problems of the illegal employment of foreigners. As was demonstrated in Section 2, in the vast majority of cases, the illegal employment of non-nationals in Poland is concentrated within a few sectors of economy. The variations between the sectors in terms of the conditions of employment and the demand for labour results in significant difficulties with arriving at solutions which would satisfy both the employers and the foreign workers looking for work in particular sectors. The simplified procedures for seasonal workers from neighbouring countries, which were introduced between 2006 and 2008 and were appropriate for the work cycle in agriculture, did not meet the expectations of employers in construction and by no means reduced the illegal employment in the latter sector. It seems that only the introduction of sector-tailored measures, in response to the specifics of employment in particular sectors, would create effective alternatives to illegal employment and significantly reduce its scale. The basis for the creation of such solutions could be provided by social dialogue with the representatives of particular sectors, and primarily, those which report a large demand for foreign workers and are at the forefront in their illegal hiring.

Separate solutions are particularly necessary in the domestic services sector. Households, which are treated as ordinary employers at present, but are not able to make their way past the bureaucratic procedure of obtaining a work permit for carers, cleaners and housekeepers. An important postulate in this regard is the creation of the possibility for domestic workers to become self-employed, thus enabling them to offer their services legally and pay taxes and social security contributions to the state budget.

Last but not least, the economic dimension of illegal employment must be re-emphasized. Neither the existing nor the recommended state policy measures would be fully successful if what is meant by successful is the total disappearance of the phenomenon. The economic gain from illegal work, untaxed and unburdened with social security contributions, will always exist and will always attract some employers and employees, both nationals and foreigners, to undeclared employment. Fiscal and other reforms aiming at lowering labour costs would be helpful in this regard, yet the cost of legal work will always exceed the cost of illegal work. Thus any state efforts to combat the phenomenon are limited, to certain extent, by the very nature of the phenomenon itself.

This report opens the field for further research in Poland. Subsequent studies should focus primarily on the monitoring of labour market needs and the extent to which they can be met by the native labour force, in order to determine migration policy objectives. Such research should encompass labour market needs with respect to various sectors. On the basis of its results, informed migration policy-makers would be able to create channels for the legal inflow of workers from abroad, which would serve as a effective alternative to illegal employment.

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G1PL – Department of Migration, Ministry of Labour and Social Policy.
G2PL – Department of Migration, Ministry of Labour and Social Policy (telephone interview).
G3PL – Department of Migration Policy, Ministry of the Interior and Administration.
G4PL – Department of the Labour Market, Ministry of Labour and Social Policy (telephone interview).
I1PL – National Labour Inspectorate.
I2PL – Border Guard.
I3PL – Customs Service.
E1PL – Polish Trade and Industrial Chamber for Construction.
E2PL – The Association of Polish Fruit-Growers
TU1PL – the “Budowlani” Trade Union
NGO1PL – the Helsinki Foundation for Human Rights
NGO2PL – La Strada

List of abbreviations:

BG – Border Guards (*Straż Graniczna*)
CS – Customs Service (*Służba Celna*)
CSO – Central Statistical Office (*Główny Urząd Statystyczny*)
HFHR – the Helsinki Foundation for Human Rights (*Helsińska Fundacja Praw Człowieka*)
MIA – Ministry of the Interior and Administration (*Ministerstwo Spraw Wewnętrznych i Administracji*)
MLSP – Ministry of Labour and Social Policy (*Ministerstwo Pracy i Polityki Społecznej*)
NLI – National Labour Inspectorate (*Państwowa Inspekcja Pracy*)
ZUS – The Social Insurance Institution (*Zakład Ubezpieczeń Społecznych*).

List of the most relevant legislation:

The Act on the Promotion of Employment and Labour Market Institutions of 20th April 2004 (Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy), *Dziennik Ustaw* 2004, No. 99, item 1001.
The Act on Granting Protection to Aliens within the Territory of the Republic of Poland of 13th June 2003 (Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej), *Dziennik Ustaw* 2007, No. 120, item 818.
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The Act on the National Labour Inspectorate of 13th April 2007 (Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy), *Dziennik Ustaw* 2007, No. 89, item 589.
The Act on the Polish Charter of 7th September 2007 (Ustawa z dnia 7 września 2007 r. o Karcie Polaka), *Dziennik Ustaw* 2007, No. 180, item 1280.

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- The Penal Code (Kodeks karny), *Dziennik Ustaw* 1997, No. 88, item 553.
- The Protocol for the Prevention, Suppression and Punishment of Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, *Dziennik Ustaw* 2005, No. 18, item 160.
- The Ordinance of the Minister of Labour and Social Policy on procedures and conditions for issuing a work permit to a foreigner of 21st July 2006 (Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 21 lipca 2006 r. w sprawie trybu i warunków wydawania zezwolenia na pracę cudzoziemca), *Dziennik Ustaw* 2006, No. 141, item 1002.
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